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ABSTRACT

Hearings on the enforcement of civil rights legislation in higher education and the impact of policies and litigation on compliance are presented. Efforts to desegregate and enhance historically-black state colleges are addressed. Louisiana's civil rights consent decree is outlined, with attention to: governance, student access, student financial aid, student attrition, equal employment opportunity, college cooperative efforts, financial aid, and monitoring and reporting. Compliance activities in Virginia and efforts to enhance black institutions are also addressed, with attention to 1983 civil rights amendments designed to: improve general education and the curriculum, change teacher certification, increase the college and graduate-school entry rate of nonwhites, provide financial aid to nonwhite students transferring to four-year colleges, and promote faculty development. Also covered are: desegregation efforts at Kentucky State University, views of the U.S. Education and Justice departments concerning their civil rights enforcement efforts; and views of the Commission on Civil Rights. Supplementary materials include the 1981-1982 report of the Office of Civil Rights of the U.S. Department of Education, and correspondence of various government offices. (SW)

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HEARINGS ON HIGHER EDUCATION CIVIL RIGHTS ENFORCEMENT

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

AND THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

HEARINGS HELD IN WASHINGTON, D.C., ON MAY 17, 18, AND 25, 1983

Printed for the use of the Committee on Education and Labor

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HEARINGS ON HIGHER EDUCATION CIVIL RIGHTS ENFORCEMENT

TUESDAY, MAY 17, 1983

House of Representatives, Subcommittee on Postsecondary Education, Committee on Education and Labor; Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,

Washington, D.C.

The subcommittees met in joint session, pursuant to call, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Paul Simon (chairman of the Subcommittee on Postsecondary Education) presiding.

Members present: Representatives Simon, Edwards, Conyers, Schroeder, Boucher, Ackerman, Sensenbrenner, Packard, Gunderson, and DeWine.

Staff present: For Education and Labor—William A. Blakey, counsel; Maryln L. McAdam, staff assistant; Lisa Phillips, staff assistant; Betsy Brand, minority legislative associate; for Judiciary—Ivy L. Davis, assistant counsel; Phillip Kiko, minority associate counsel.

Mr. Simon. The hearing will come to order.

Today the Subcommittees on Postsecondary Education and on Civil and Constitutional Rights begin 3 days of oversight hearings on civil rights enforcement in higher education.

This is the first time that both subcommittees have jointly reviewed the compliance, monitoring and enforcement activities of the Department of Education and the Department of Justice under title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

These hearings will review in some detail the current enforcement activities undertaken by the administration and the impact of the policies and litigative posture on civil rights compliance at institutions of higher education.

We are especially concerned about efforts to desegregate institutions of higher education and to enhance the historically black public colleges and universities.

Today we will hear from the presidents of two of these institutions, and from the secretary of education of the Commonwealth of Virginia. We hope to learn how these institutions and Virginia are proceeding in their efforts to comply with the law and fulfill the congressional mandate for assuring equal educational opportunity and full and equal access to postsecondary education.

It is fitting that we begin these hearings on the 29th anniversary of the Supreme Court's decision in *Brown* v. *Board of Education.* The Nation still has a long way to go in fulfilling that mandate. I trust that we are moving in the right direction.

Let me just add one personal note before I introduce my colleague, and that is, nothing is more vital to the future of this Nation than that we provide opportunity and justice and see that that is done for those of our citizens who have not always had either the opportunity or justice.

One of those who has been a giant in this Congress over the years, one of those who has contributed the most, is my colleague whom I am going to call on next, who is the chairman of the other subcommittee from the Judiciary Committee.

I feel it is an honor to serve with him in the House. I am particularly pleased to have him cochair these hearings, my colleague Don Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman. I am, indeed, delighted to join with the very distinguished gentleman from Illinois in holding these joint hearings on executive branch enforcement of the civil rights provisions, which prohibit discrimination against minorities, women and the handicapped in federally funded programs.

As Mr. Simon remarked, today is the 29th anniversary of *Brown,* yet the irony is that we come to this juncture at a time when the Federal Government's commitment to equality of rights is being questioned by the very beneficiaries of Federal civil rights legislation.

The acknowledged changed civil rights strategy of this administration is to return antidiscrimination enforcement to State and local governments. The lesson we should have learned since 1954 is that barriers to equality of rights have been removed because of Federal intervention.

In the wake of continued State resistance to meeting the letter and spirit of civil rights laws, we have also learned that the pace with which those barriers have been removed has been swift or slow depending on the degree of commitment from the three branches of the Federal Government.

The perceived commitment of the legislative and judicial branches has sometimes been spotty, but until now the executive branch has been viewed as unwaivering in its commitment to vigorous civil rights enforcement.

Hearings before both these committees have established that 29 years after *Brown,* the executive branch charged with enforcing these civil rights provisions has adopted a strategy to limit severely the application of the antidiscrimination provisions.

In so doing, this administration has denied the rights and remedies afforded by Federal laws, which prohibit discrimination against minorities, women and the handicapped. These groups, the record will show, correctly perceive this administration as realining its allegiance with those who have benefited from discriminatory practices.

Thank you, Mr. Chairman.

Mr. SIMON. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, from the opening statement of the gentleman from California, Mr. Edwards, it appears that these hearings are going to be used as an indictment of the policies of the present administration on civil rights enforcement.

It is all well and good for the gentleman from California to make these statements and for the committees to hold hearings on this subject because it is a subject of great concern.

However, I would like to point out that once again the rules of the Committee on the Judiciary have been violated in that as of the close of business yesterday, no testimony was given to the minority counsel of the Subcommittee on Civil and Constitutional Rights.

I also believe that the rules of the Committee on Education and Labor have been violated because there is a 24-hour advance distribution requirement in that committee's rules.

Now, if those of us on this side of the aisle are to intelligently respond to statements such as those that the gentleman from California has made and which I assume the witnesses will be making, since the majority has put together the witness list for these hearings, then at least we ought to be given the courtesy of getting the testimony on the afternoon before the witnesses appear so that we know what they are going to say, and we are going to be able to at least make some effort to check out the statements and the graphs in question.

But, instead, the minority has been handed a packet of testimony as we walk in the door by the majority staff. I think that we ought to follow the rules that we have set for ourselves to show that this is a committee of rules rather than of people.

I am not going to make a point of order against the witnesses that are testifying today because they have all come from out of town, but I would hope that when we have future hearings, particularly of this nature, that the minority is given the courtesy of at least seeing what the majority's witnesses are going to say.

I yield back the balance of my time.

Mr. SIMON. If one of the cochairman could just respond briefly, and I would be pleased to yield to my colleague, we simply didn't receive the testimony in time to distribute it. When we do in future hearings, we will distribute it on time.

This is a practice that has been followed. If I can add, while we have put together a witness list, we will be happy to—and our subcommittee has always done this—happy to have any additional witnesses the minority requests.

Mr. SENSENBRENNER. If the gentleman from Illinois would yield, that is fine. We have had no problem getting our witnesses on and giving them the opportunity to appear.

But given the tenor of the statement of our cochair, the gentleman from California, Mr. Edwards, this appears to be the beginning of a series of hearings to indict the activities of the administration in this area.

That is your prerogative to do, and I don't quarrel with that, but I do think that when we are about ready to launch an attack on the administration or anybody else, we at least ought to give our side of the aisle as much information in testimony pursuant to the rules so that we can review that testimony and we can respond with some research and with some intelligence and with some foresight, and you just haven't give us that, Mr. Chairman.

Mr. SIMON. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

I am as sorry as my cochair, and as Mr. Sensenbrenner is, that we did not receive the testimony until this morning. I still have not seen any of the testimony.

We will always share testimony upon arrival with our friends on the other side of the aisle. I am just very sorry that in this situation today the material just did not arrive.

Mr. SENSENBRENNER. Well, if the gentleman from California will yield, I would point out to everybody present here that what we were handed coming into the room this morning is this thick. It is at least 100 pages worth of testimony, consent decrees, analyses and memoranda.

Again, you are expecting us to respond to what these people say cold, without even having the time to look through all of this stuff to see what they have got to say. Very honestly, I don't think that this is the way to do business.

Mr. SIMON. Are there further comments from other members of the subcommittees?

If not, we will call our witnesses, and unless there is objection, I will hear all three as a panel—Dr. Jessie Stone, Dr. John Casteen, Dr. Raymond Burse.

Our first witness, Dr. Jessie Stone, the president of Southern University System of Baton Rouge, La.

STATEMENT OF JESSIE STONE, PRESIDENT, SOUTHERN UNIVERSITY SYSTEM, BATON ROUGE, LA.

Mr. STONE. Mr. Chairman and members of the two committees, I would like to express my personal appreciation to you for the privilege and the opportunity of coming before you today to testify on the matter about which I was invited to testify.

I would like, also, to say that my testimony is not to be construed as being in favor of or against this or any other administration. I shall simply try to point out to you the facts and circumstances as I see them.

I have submitted a formal written statement, together with the necessary copies, and copies of the consent decree, which will be the subject of my testimony.

Mr. SIMON. They will be entered in the record.

Mr. STONE. I would like to express my appreciation to the people of the State of Louisiana for the support that they have given to Southern University and to those governmental agencies that have supported Southern University through the years, and especially to that group of Louisianians that sat down and formulated the consent decree about which I will be speaking here today.

I will make a brief statement, and then I will answer any questions that you may want to pose for me.

Southern University and Grambling State University on September 8, 1981, jointly signed a document with the Department of Justice, the State of Louisiana and the public, historically white universities of Louisiana, which after approval by a three-judge panel of the Federal judiciary became known in Louisiana as the consent decree.

Southern University was created in 1880. It gained land grant approval in 1890. It is today a three-campus institution with campuses in Shreveport, Baton Rouge, and New Orleans, La.

It is said to be the largest of the predominantly black public colleges or university systems in America. It offers programs and degrees in agriculture, home economics, the arts, humanities, sciences, education, engineering, architecture, law, and military science. It has ROTC programs. It does not offer degrees in military science, but it does commission persons in the U.S. Army, the U.S. Navy, and the U.S. Marine Corps.

Students come from all 64 parishes of Louisiana, 49 of the 50 States, and from 26 foreign countries. Eighty-two percent of the students who study on the Baton Rouge campus receive financial aid of one kind or another, mainly from the Federal Government.

Seventy-five percent of our students on the New Orleans campus receive financial aid, and 95 percent of the students on our Shreveport campus receive financial aid of one kind or another.

We graduate about 2,000 students per year. Many of these students go on to become teachers, doctors, lawyers, engineers, governmental employees at the local, State, and National level, judges, and a few college presidents.

They also serve in the Armed Forces of the United States where we have four active generals on duty at this particular time in the Army of the United States, and several others that are likely to be appointed generals in the very near future, including a woman who is a graduate of Southern University.

Grambling State University has enjoyed a similar history. It was created in 1901 as the Colored Industrial and Agricultural School of Lincoln Parish. By 1928, it had become a junior college with the designation of Louisiana Negro Normal.

Students of both Grambling and Southern are mainly black. Louisiana was one of the original *Adams* states, and litigation was commenced in this action leading to the consent decree on March 14, 1974, because Louisiana refused to file a plan stating that it was unitary.

The matter, of course, was turned over to the Department of Justice, who filed a suit. In 1973, Louisiana established a new constitution, and in its new constitution it took up the question of governance and created a management board for Southern University, the Southern University System, which is a management board of 18 members, 15 of whom are black, 2 are members of the white race, and 1 is American Indian.

Incidentally, 12 of those persons who serve on our board are graduates of Southern University, and one is a student at Southern University.

The consent decree assigned subcommittee of 1981 provided, among other things, for the general enhancement of Southern University or the programmatic enhancement of Southern University through the institution of new programs that are provided in the consent decree, and enhancement through the acquisition of facilities.

It contains a number of provisions designed to impact upon the relationships between Southern University and Grambling State

University and other universities in proximate location or proximate to Southern University and Grambling State University.

As of this time in Louisiana, the consent decree, as I have pointed out in my statement, is being implemented in many of its aspects, and everyone in Louisiana seems to be especially pleased with the cooperation that exists between the predominant black institutions and the predominantly white institutions.

There has been an exchange of faculty that has brought white students to the campuses of Southern University, and I presume Grambling State University, and black students to the campuses of the predominantly white universities.

There has been a substantial increase in the student credit hours generated by "other race" students on each of the campuses, that is, the Baton Rouge campus, the New Orleans campus of Southern University, as well as the Louisiana State University campus at Baton Rouge and the University of New Orleans campus in New Orleans.

Southern University and Grambling State University have not received considerable increases in funding, but we have received substantial funding of the programs that are called for in the consent decree.

Nevertheless, the success of the consent decree will depend upon the good faith of all of the persons involved in its implementation. We have had a few instances in which other than good faith has been manifested since the beginning of the consent decree. One in particular that I would like to mention is that the consent decree provides for the assignment of new high-cost, high-demand doctoral programs on the campuses of Southern University.

Recently, we think that the State of Louisiana, the board of regents, made an error when it refused to assign a Ph.D. degree program in computer sciences at Southern University; we think contravention of the clear language that the consent decree assigned that program to the Louisiana State University, Baton Rouge campus.

This was done despite the fact that the monitoring committee had voted to set aside the action of the board of regents, which indicated originally that the assignment would be made at Louisiana State University.

Of course, in that particular instance, the representation of the board of regents was changed on the monitoring committee and a subsequent vote of the monitoring committee went the other way.

But, still, this is a matter that does have some prospect of being brought to the attention of the three-judge panel sitting in New Orleans which originally signed this decree.

Another instance I might refer to is a situation which the board of regents has recommended in capital improvements some $22,100,605 for the predominantly black institutions, and the regular session 1983 appropriation bills, 459 and 460, indicate a high probability that for the funding contemplated herein that will only be $16,635,500, which would make it some $6 million short.

In the final analysis, and in conclusion, I would simply like to say to you that enhancement of a university is more than the remodeling and repairs of the old and the building of new facilities or the establishment of new programs of study.

Enhancement is the improving of a school such that it provides in the highest way valuable educational experiences to all who enroll in it, viable programs and course offerings.

The consent decree must not, I think, be viewed alone as an estimate for the desegregation of higher education in the State of Louisiana, but more as an organ for the establishment of the high education experience in the State of Louisiana on a plane where excellence in performance is commonplace.

If the increasing funding, the program expansion, and the capital improvements provided by the consent decree are limited in scope to the mandate of the law to desegregate higher education in the State of Louisiana, the consent decree is nothing more than an exercise in futility.

Broader concerns of having ample manpower in the market place who are all the ethnic types in the State and able graduates of the State's institutions of higher education, graduates who can improve the quality of life in the State and create in it a higher social order, I think, must guide the behavior of the State and its officials.

There must be, too, a determination by the court, and I think the Justice Department, as well, to monitor the behavior of State officials when the consent decree is terminated lest there be a regression in the gains made by the historically black colleges during the tenure of the decree.

The court, more than any other agency, has the best chance for seeing to it that the good faith created by law becomes good faith by conscience. The filing of the suit itself had an impact, though it was not prosecuted for a number of years.

Certainly, the signing of the judicial decree itself will have a considerable impact. Federal presence, I think, is necessary.

In addition, great care must be exercised so that there is no repetition of the experiences we had regarding the Ph. D. degree program in computer science.

The Louisiana Board of Regents recently approved that program, as I indicated to you earlier. It now will be assigned to the board of regents, when we think clearly Southern University was a better choice.

The consent decree, in the final analysis, is nothing more than a collection of words. It can become a living document only as its provisions are administered in good faith, even beyond the active period of the consent decree.

I will be happy to answer any questions that you may have.

Mr. SIMON. Thank you very, very much. We will hold off questions for you until we get all through the panel.

[The prepared statement of Jesse N. Stone, Jr., follows:]

PREPARED STATEMENT OF JESSE N. STONE, JR., PRESIDENT, SOUTHERN UNIVERSITY SYSTEM, BATON ROUGE, LA.

On September 8, 1981, the Southern University System and Grambling State University, both public historically Black universities, joined the public historically white universities in the State of Louisiana (Louisiana State University System, Louisiana Tech University, McNeese State University, Nicholls State University, Northeast Louisiana University, Northwestern State University, Southeastern Louisiana University, University of Southwestern Louisiana, Delgado Junior College) and the United States Department of Justice in the signing of a Consent Decree to desegregate the public institutions of higher education in the State of Louisiana and to erase from them all vestiges of segregation. Southern University, since its creation by the Louisiana State Constitutional Convention of 1879 and its formation in the city of New Orleans, Louisiana, has enrolled only Black students, as provided for in Act 87 of 1880 of the General Assembly of the State of Louisiana. The recognition of the University as a land-grant college by the federal government under the provisions of the Second Morrill Act in 1890 did not change its designation as an institution for the education of Blacks. That limitation remained in force, though Southern University was relocated in Baton Rouge, the State's Capitol City in 1914.

Grambling State University has a similar history. Grambling was created in 1901 as the Colored Industrial and Agricultural School of Lincoln Parish. By 1928, it had become a State supported Junior College designated as Louisiana Negro Normal and Industrial Institute. It was not until 1946 that it became known as Grambling College of Louisiana, and its clientele remained exclusively Black.

Title VI of the Civil Rights Act of 1964, when it became law, became also the catalyst which caused change in public higher education in Louisiana. Under its provisions, the courts required those institutions and State higher education systems previously comprising racially identifiable schools and programs to readjust themselves in line with the requirements of the U. S. Constitution and its various federal mandates. Under Title VI, the State of Louisiana, in 1969, along with nine other States (Arkansas, Georgia, Florida, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania, and Virginia) were identified by HEW as states operating dual systems of education. HEW demanded the preparation of desegregation plans, failure to do so would lead to the termination of federal funds. The State of Louisiana through the Louisiana State University Board and the State Board of Education, (the two management boards for higher education in the State of Louisiana at that time), submitted compliance reports, but refused to submit desegregation plans. It was this refusal which led to litigation and the eventual Consent Decree which is summarized below.

The litigation which led to the Consent Decree was commenced on March 14, 1974 by the United States through its Attorney General, to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964. The United States District Court for the Eastern District of Louisiana has jurisdiction of this action.

In its complaint, the United States alleged that the defendants have maintained a racially dual system of public higher education in violation of the Fourteenth Amendment and Title VI, and have failed to develop and implement detailed plans to eliminate all vestiges of a dual higher education system in the State of Louisiana. The defendants consistently denied these allegations, asserting that they were in compliance with the Fourteenth Amendment and Title VI.

Southern University's System President, university administrators, representatives of the Board of Supervisors of Southern University and Agricultural and Mechanical College, and Southern University System's counsel participated actively and fully in the negotiation sessions. The other historically Black institution, Grambling State University, was represented by its President, university administrators, representatives of the Board of Trustees for State Colleges and Universities and its counsel. Agreement was reached on the provisions set forth in the Consent Decree. The Court "ORDERED, ADJUDGED AND DECREED" that the defendants shall implement in good faith the commitments set forth below and the parties shall be bound by the following:

Section One: Governance

"The State of Louisiana is committed to representation on each of the higher education boards without regard to race." The state adopts the goal of increasing the other-race representation of all the Governance Boards, except the Southern University Board, so that the composition of the membership on each reflects the racial composition of the State's population. The state adopts, as an interim six-year goal, the increasing of other-race representation on the Board of Supervisors of Southern University so that the racial composition reflects inversely the racial composition of the state. (Page 3)

Section Two: Increased Student Access

"Equal Access...The state adopts the goal that the proportion of Black high school graduates throughout the state who enter public institutions of higher education shall be equal to the proportion of white high school graduates throughout the state who enter such institutions... ."

"The state also adopts the goal that the proportion of qualified Black Louisiana graduates who graduate from undergraduate institutions in the state system and enter state graduate and professional schools shall be equal to the proportion of qualified white state residents who graduate from state institutions." (Pages 3 and 4)

Section Three: Student Financial Assistance

"In order to ensure that other-race students who are financially unable to attend college may be afforded, to the extent possible, the opportunity to do so, state funds administered by the Governor's Commission on Services to Education and available to undergraduate and graduate students shall be administered in a manner so as to enable each institution to achieve its other-race enrollment goals."

"In addition, the state shall establish a scholarship program to assist those institutions that offer professional programs in medicine, dentistry, and veterinary medicine to increase the level of other-race participation therein. Eligible students will receive a $5,000 scholarship per year... ." (Page 8)

Section Four: Student Attrition and Developmental Education Programs

"The state shall take further steps to reduce any disparity between the proportion of Black and white students completing and graduating from Louisiana public institutions of higher education." (Pages 8 and 9)

Section Five: Equal Employment Opportunity

"The state shall adopt the goal that the proportion of Black administrators, faculty, and staff employed at each Louisiana predominantly white public institution of higher education and staff employed by each higher education board shall be equal to the proportion of Black individuals with the required credentials in the relevant labor market. Additionally, the state shall adopt the goal that each predominantly Black institution of higher education shall increase its proportion of white administrators, faculty and staff." (Other requirements are delineated on Pages 9, 10, 11, and 12.)

A significant part of Section Five addresses the Southern University and Grambling State University Faculty Development Program. "The purpose of the program will be to allow faculty members at each institution who lack the terminal degree to take paid leaves of absence in order that they may obtain terminal degrees. The program will be funded for six years as follows: Grambling State University will receive $70,000 annually and the Southern University System will receive $230,000 annually."

Section Six: Cooperative Efforts of Proximate Institutions

The proximate institutions in the Lincoln Parish, Baton Rouge and New Orleans areas shall develop cooperative plans. The cooperative programs in each area shall include: Faculty Exchange Programs, Student Exchange Programs, Dual or other Cooperative Degree Programs, and Other Cooperative Efforts. (Pages 14, 15, and 16)

Section Seven: Enhancement of Predominantly Black Institutions

Outlined are enhancement procedures for Caddo Parish Area and Enhancement of Academic Programs. See specific programs (Pages 19, 20, 21, and 22). In addition, Future Program Considerations will be reviewed for implementation at predominantly Black institutions. New Role, Scope and Mission Statements are mandated for each predominantly Black institution. The Board of Regents shall give priority to placing at a predominantly Black institution any of the programs identified in prior sections for which a need is established during the term of the Consent Decree. The Board of Regents will give special consideration to placing new high-demand, high-cost programs at predominantly Black institutions. The Board of Regents shall not approve any new program at a proximate predominantly white institution which duplicates a program established at or approved for the proximate predominantly Black institution.

Capital Improvements at Predominantly Black Institutions

"The state shall improve existing facilities and construct new facilities at its predominantly Black institutions such that their physical plant will be comparable to those available at comparable predominantly white institutions. The Board of Regents shall adjust its five-year capitul outlay plan by January 1, 1983 to incorporate the recommendations of the facilities study, assigning the highest priority to correcting deficiencies identified by the study, excepting emergencies, and the state shall provide capital outlay funds consistent therewith." (Pages 24 and 25)

Increased Financial Support

"The Board of Regents shall amend the State Appropriation Formula to include a mechanism by which state appropriations per FTE law student at Southern University-Baton Rouge will be at least at parity with state appropriations per FTE law student at the Paul M. Hebert (LSU) Law Center. Additional funds in the amount of at least $285,000 per year shall be appropriated to Southern University for a period of six years for enhancement of its Law School. The state shall ensure that Southern University and Grambling State University will receive appropriations reasonably necessary to fund the requirements of this Consent Decree." (Pages 25 and 26)

Section Eight: Monitoring and Reporting

"A committee, to be known as the Consent Decree Monitoring Committee, shall be established to monitor the compliance of the defendants with the requirements of this Decree."

The Consent Decree Monitoring Committee shall consist of nine members. Each board shall appoint two members of the committee. These two may be members of the board or employees of the institutions under its supervision. The Governor shall appoint a member who will serve as the Chairman. (Pages 26 and 27)

Responsibilities of the Consent Decree Monitoring Committee, in terms of Reporting, including Narrative Assessment and Statistical Reports are described on Pages 27, 28, and 29.

This Decree resolves all issues in contention between plaintiff and defendants in this lawsuit relating to compliance with and enforcement of the Fourteenth Amendment and Title VI.

The court shall retain jurisdiction of this action to assure implementation of the provisions of the Decree.

The Decree shall become effective upon the date of its entry by the Court and shall remain in effect until at least December 31, 1987. On December 31, 1987, the Decree shall terminate automatically unless the plaintiff by motion requests the Court to conduct a hearing to determine whether the defendants are in compliance with the provisions of the Decree.

No party to the Decree admits, by entering into this agreement, that there has been a violation of the Constitution of the United States, Title VI, or any other law, regulation, rule, criterion, or executive order. No such determination has been made by the Court.

Good faith efforts on the part of the defendants are mandated to achieve and implement the goals and commitments of this Consent Decree. The goals of the Decree are not to be construed as quotas and the failure to achieve any goal shall not in itself constitute noncompliance.

An Addendum to the Consent Decree was agreed upon to settle the unresolved issues affecting postsecondary education in the Caddo-Bossier area following approval of the Consent Decree.

The State agreed to make Southern University-Shreveport/Bossier City (SUSBO) a comprehensive community college and to provide the funding and support necessary to ensure attainment of this objective. In addition, the new positions of vice chancellor for planning and development and director of community services and continuing education were created. An assisting agency will be hired for a three-year period to aid in the design of the comprehensive plan for SUSBO. As a part of the institutional development plan, the assisting agency shall recommend and assist in the preparation and implementation of no fewer than twelve exclusive new programs at SUSBO.

The State agreed to fund new programs at SUSBO at a level to make the programs viable and capable of attracting students of all races. Off-campus locations will be identified for SUSBO's instructional programs.

Programs in operation at Bossier Parish Community College (BPCC) as of September 8, 1981 are not affected by this Addendum. New programs recommended for BPCC shall be subject to the provisions of the Addendum and shall not adversely affect the other-race presence at SUSBO.

The Addendum further contains provisions for Cooperative Programs, Other-Race Faculty Exchange, Other-Race Student Exchange, and Dual or Other Cooperative Programs. Six-year enrollment and employment goals are also included. Cooperative efforts are mandated for LSU-Shreveport, LSU Medical Center and Shreveport-Bossier Vocational-Technical Institute. An Inter-Institutional Council was established to effect improved communication, cooperative planning and coordination of joint educational and training programs offered by member institutions in the Caddo-Bossier area.

The Addendum was amended to revise the timetables for compliance with the provisions inasmuch as the delayed entry of the documents prevented hiring the assisting agency on the original date contemplated in the Addendum.

The Consent Decree has provided for an increase in formula funding for developmental education for Grambling State University and the institutions in the Southern University System for a period of six years, effective the Fall Semester 1982.

The following new academic programs are operative:

Computer Science (B.S.) New Orleans campus

The Computer Science Program was approved March 22, 1982. The enrollment in this program for the 1982 Fall Semester was 89 in the day school and 91 in the evening college. A 24% increase is projected for the Spring Semester 1983 based on the addition of one course in the Weekend College and the unofficial enrollment count as of January 15, 1983.

Substance Abuse (B.S.) New Orleans campus

This program was approved June 24, 1982. At the end of the Fall Semester 1982, this program had 63 majors. Thirty of these students are other-race students.

The following new academic programs have been approved by the Southern University Board of Supervisors and the Louisiana State Board of Regents:

- Allied Health Programs (B.S.) Baton Rouge and New Orleans campuses
- Center for Small Farm Research - Baton Rouge campus
- Print Journalism (B.A.) New Orleans campus
- School of Accountancy - Baton Rouge campus
- Criminal Justice (B.S.) New Orleans campus

-Technology (B.S.) New Orleans campus
-School of Nursing - Baton Rouge campus
-Environmental Chemistry (B.S.) Baton Rouge campus

Scheduled to be implemented on the Baton Rouge campus in August, 1983 are:

Computer Science Program (M.S.)

Rehabilitation Psychology (B.S., M.S./M.A.)

Special Education Programs (M.Ed.)

The specialist and doctoral programs (Ed.S., Ed.D., and Ph.D.) are tentatively scheduled for implementation in August, 1985. The M.P.A. Program in Public Administration on the Baton Rouge campus and the School of Social Work (MSW) on the New Orleans campus have been submitted to the Louisiana State Board of Regents for approval. The School of Social Work is to become operative in the 1983-84 session.

Many cooperative efforts in proximate institutions under the provision of the Consent Decree have been successfully implemented at Southern University-New Orleans.

-The Joint Committee on Cooperative Efforts has been organized. A statement on the formation and the description of the committee, requested by the Board of Regents, has been developed and signed by the Chancellors of Southern University-New Orleans and the University of New Orleans.

The report which follows presents detailed activities relative to faculty exchange, student exchange, guest lecturers, Cooperative/Dual Degree Programs, and other areas of cooperation.

During the Fall 1982, five Southern University-New Orleans faculty members (3 Blacks and 2 others) taught at the University of New Orleans. During the Spring 1982, nine Southern University-New Orleans professors

(5 Blacks, 1 white and 3 others) are teaching at the University of New Orleans. The Consent Decree goal for 1982-83 is three.

During the Fall Semester 1982, five University of New Orleans professors (5 whites) taught at Southern University-New Orleans. During the Spring Semester 1982, six University of New Orleans faculty members (6 whites) are teaching at Southern University-New Orleans.

Southern University-New Orleans and the University of New Orleans have constructed a rotation plan for faculty exchange through the Spring of 1988.

During the Fall and Spring Semesters of 1982-83, two guest lecturers from the University of New Orleans participated in Black History activities at Southern University-New Orleans.

During the Fall Semester 1982, 31 Southern University-New Orleans students (30 Blacks and 1 other) generated 93 student credit hours (SCHs) at the University of New Orleans. During the Spring Semester 1983, 63 Southern University-New Orleans students are generating 277 SCHs at the University of New Orleans. At the end of the Spring Semester 1982, a total of 370 SCHs will have been generated by Southern University-New Orleans students. The Consent Decree goal is 150 SCHs. Of the 370 SCHs, 327 were generated by Black students.

During the Fall Semester 1982, 49 University of New Orleans students (11 Blacks, 35 whites and 3 others) generated 153 SCHs at Southern University-New Orleans. During the Spring Semester 1983, 170 University of New Orleans students (29 Blacks, 120 whites and 21 others) are generating 522 SCHs at Southern University-New Orleans. At the end of the Spring Semester 1983, a total of 675 SCHs will have been generated by University of New Orleans students. The Consent Decree goal is 500 SCHs. Of the 675 SCHs, 471 were generated by white students.

Six areas will offer Dual Degree Programs (DDP) or Cooperative Degree Programs (CDP) between Southern University-New Orleans and the University of New Orleans. Both campuses are continuing to conduct further discussions, including consultation with appropriate faculty groups, in order to make detailed plans for further implementation.

Other Areas of Cooperation

The University of New Orleans-Southern University-New Orleans committee on Joint Cooperative Efforts is exploring many areas of cooperation not mentioned under the Consent Decree.

A statement to appear in the 1983-84 University of New Orleans and Southern University-New Orleans catalogs is, "The University of New Orleans has established close ties with its neighbor sister university, Southern University in New Orleans. Numerous cooperative programs exist or are in the process of being developed. Included among these programs are:

Art Education	Urban Studies
Social Welfare	Journalism
Engineering	Computer Science

To facilitate cross-registration at the two schools, the respective registrars' offices have developed admissions protocols for each university and are developing a compatible calendar. Students and faculty from both schools are now exchanged on a regular basis. Both schools are reaping many mutual benefits because of this association and are proud of these cooperative efforts among the students and faculty of both universities.

Questionnaires have been forwarded to all faculty and student exchange participants from Southern University-New Orleans and the University of New Orleans. When the results of this questionnaire are compiled, it will be recorded in a future bimonthly report.

The joint publication of one or more issues of the Observer and the Driftwood are now contemplated. The two universities are investigating the possibility of producing one or more combined issues of the student newspapers, the Observer (Southern University-New Orleans) and the Driftwood (University of New Orleans), as a feature of the cooperative journalism program that will be developed between the two universities.

Identical calendars for both campuses to facilitate cross-registration. The registrars on both campuses are working on the development of concurrent calendars and considerable progress has been made in terms of registration dates and orientation periods as well as examination periods. Beginning with the Summer Session 1983, the calendars will be identical.

The Joint Committee held a meeting on November 4, 1982, to which were invited various student representatives from both schools. A dialogue has begun between these student representatives that will lead to cooperative efforts between the two SGA groups and between the student newspapers.

The Caddo-Bossier Inter-Institutional Education Council, mandated by the Consent Decree, convened on December 7, 1982 at LSU-Shreveport by invitation from Chancellor E. Grady Bogue of LSUS. Dr. William Arceneaux, Commissioner of Higher Education, was present and opened the meeting.

By-laws were drawn from the Council to consider and were adopted in the April 12, 1983 meeting hosted by Dr. Donald A. Webb at Centenary College. The Council will have three meetings a year -- September, December, and April. The next scheduled meeting of the Caddo-Bossier Inter-Institutional Education Council is September 14, 1983 to be hosted by Chancellor Leonard C. Barnes at Southern University-Shreveport.

Member Institutions: Southern University-Shreveport, Bossier Parish Community College, LSU Medical School-Shreveport, LSU Medical Center School of Allied Health Professions, Shreveport-Bossier Vocational-Technical Institute, Northwestern State University College of Nursing, Grambling State University, Centenary College, and Louisiana State University-Shreveport.

Southern University at Baton Rouge exceeded its Consent Decree Faculty Exchange goal for the 1982-83 academic year. The Fall Semester 1982 exchange program included five (5) Southern University instructors at LSU and seven (7) LSU instructors at Southern. In the current semester, Spring 1983, fourteen (14) Southern University professors are teaching in the exchange program at LSU, and eighteen (18) LSU faculty members are teaching at Southern.

Fall Semester 1982 faculty exchange personnel from both institutions were interviewed at an evaluation session at Southern University on December 9, 1982. No major problems surfaced in the meeting. Minor complaints were registered concerning office space and parking. Some instructors thought the orientation could be more extensive, and some felt that the exchange experience could be more effective and meaningful through longer appointments.

The student exchange goals are listed in terms of student credit hours instead of the number of students who are cross-registered. In the first year, LSU students should be carrying at least 600 student credit hours at Southern, and Southern students should be enrolled in a minimum of 300 student credit hours at LSU. The goals increase each year so that by the 1986-87 school year, the credit hours required will be 1500 and 1100 for LSU and Southern, respectively. Approximately 981 student credit hours, including 278 credit hours by Black students, will be earned by Southern students cross-registered at LSU during the 1982-83 school year.

Progressive increases in student exchange goals in succeeding years may present a problem for both institutions. Included among the measures being taken to help increase the level of SU/LSU student exchange are:

1. joint publication of course schedules-future implementation;
2. publication and distribution of "attractive course" lists on both campuses;
3. development of "magnet courses";
4. joint production of SU/LSU cross-registration procedures.
5. provision of free student transportation under certain conditions;
6. greater encouragement of cross-registration through advisement;
7. scheduling certain courses at strategic times more convenient for cross-registration students; and
8. honoring parking decals on both campuses.

Addressing the problem of the need to develop strategies to increase cross-registration, especially the cross-registration of LSU students at Southern, the SU/LSU Intercollegiate Coordinating Council appointed a committee to design a "super magnet" course. The class would meet alternately at Southern and LSU, and free student transportation would be provided. The course would be a public issues seminar utilizing guest lecturers with state, national and possibly, international reputations.

Agreement statements for cooperative efforts between Southern University and Louisiana State University, Baton Rouge have been developed:

-An Agreement for Cooperative Activities in Special Education

-An Agreement for Cooperative Activities in the Masters Degree Program in Public Administration

-An Agreement to Establish a Dual Degree Program of Study

As a result of a mandate from the State of Louisiana Board of Regents in regard to Southern University-Baton Rouge and Southeastern Louisiana University-Hammond, the two universities entered into a cooperative arrangement which involves both faculty and student exchange.

During the Spring Semester 1982, one faculty member from Southern University-Baton Rouge taught one course in computer science at Southeastern Louisiana University, and one faculty member from Southeastern Louisiana University taught one course in computer science at Southern University-Baton Rouge.

Thirty-two students from Southeastern Louisiana University enrolled in a computer science course at Southern University-Baton Rouge during the current semester.

The Consent Decree and the Addendum to the Consent Decree both provide for special financial support to aid select institutions in the implementation of the Consent Decree as envisioned. The major financial commitments were to the "Predominantly Black Institutions", Grambling State University, Southern University-New Orleans, Southern University-Baton Rouge, and Southern University-Shreveport.

The total funds made available through state appropriations to all institutions included in the Consent Decree amounted to $6,474,586 for operating purposes during 1982-83. The predominantly Black institutions received $4,476,768 of the total funds in 1982-83 as shown in Tables I and II.

The Louisiana State Board of Regents has recommended that the state provide $9,052,511 in Consent Decree funds during the 1983-84 fiscal year. Their recommendation includes $7,398,597 for the predominantly Black institutions which requested $9,497,452 for 1983-84. A summary of the funds

SUMMARY OF CONSENT DECREE FUNDING

INSTITUTIONS FUNDED Predominantly Black Institutions	Actual 1982-83	Requested 1983-84	Recommended by Board of Regents for 1983-84	Included in Appropriation House Bill No. 153 Regular Session 1983
Grambling State University	$1,148,097	$1,458,978	$1,468,193	$1,468,193
Southern - Baton Rouge	$1,552,964	$5,278,564	$3,488,071	$3,488,071
Southern - New Orleans	785,752	1,641,937	1,356,039	1,356,039
Southern - Shreveport	107,955	235,973	204,294	204,294
Southern - System Office	882,000	882,000	882,000	878,375
Total Southern System	$3,328,671	$8,038,474	$5,930,404	$5,926,779
Total for Predominantly Black Institutions	$4,476,768	$9,497,452	$7,398,597	$7,394,972
Predominantly Black Institutions	$4,476,768	$9,497,452	$7,398,597	$7,394,972
Other Institutions	2,650,818	1,646,869	1,653,914	1,621,222
STATE'S TOTAL	$7,127,586	$11,144,321	$9,052,511	$9,016,194

TABLE I

TABLE II

CONSENT DECREE FUNDING

Institution/Project	Budgeted 1982-83	Requested 1983-84	Difference	Regents Recommendation	Regents Recommendation Compared To 1982-83 Bud.
Grambling					
General Enhancement	$ 373,000	$ 373,000	$ -0-	$ 373,000	$ -0-
Developmental Education	500,000	500,000	-0-	500,000	-0-
Faculty Development	70,000	70,000	-0-	70,000	-0-
Other Race Recruitment	99,000	99,000	-0-	99,000	-0-
Professional Services for Program Development	40,000	-0-	(40,000)	-0-	(40,000)
MAT in Natural Sciences	-0-	27,500	27,500	19,500	19,500
MAT in Social Sciences	-0-	26,500	26,500	17,500	17,500
MSW in Social Work	-0-	12,000	12,000	6,000	6,000
MBA in Business Administration	-0-	16,000	16,000	5,000	5,000
MS in Criminal Justice	-0-	7,000	7,000	4,000	4,000
BSN in Nursing	-0-	87,000	87,000	173,368	173,368
MS in Developmental Education	-0-	100,875	100,875	82,116	82,116
MALS in Liberal Studies	-0-	74,006	74,006	52,612	52,612
Co-operative Efforts	66,097	66,097	-0-	66,097	-0-
Total Grambling	1,148,097	1,458,978	310,881	1,468,193	320,096

TABLE II (Cont'd)

CONSENT DECREE FUNDING

Institution/Project	Budgeted 1982-83	Requested 1983-84	Difference	Regents Recommendation	Regents Recommendation Compared To 1982-83 Bud.
Louisiana Tech					
Co-Operative Efforts	66,097	74,680	8,583	66,097	-0-
Board of Trustees					
Legal Fees	25,000	25,000	-0-	25,000	-0-
TRUSTEE SYSTEM TOTAL	$1,239,194	$1,558,658	$ 319,464	$1,559,290	$320,096
Southern-Baton Rouge					
Other Race Recruitment	143,294	172,295	29,001	143,294	-0-
Developmental Education	486,500	486,500	-0-	486,500	-0-
School of Nursing	55,833	496,465	440,632	221,232	165,399
School of Accountancy	69,105	616,622	547,517	167,393	98,288
Center for Small Farm Research	59,805	668,005	608,200	433,430	373,625
Co-Operative Efforts	50,000	60,700	10,700	50,000	-0-
Law School Parity Enhancement	638,427	758,516	120,089	757,780	119,353
Computer Science-MS Degree	-0-	500,809	500,809	473,409	473,409

CONSENT DECREE FUNDING

Institution/Project	Budgeted 1982-83	Requested 1983-84	Difference	Regents Recommendation	Regents Recommendation Compared To 1982-83 Bud.
Public Administration- (MPA)	-0-	371,420	371,420	226,335	226,335
Special Education	-0-	378,100	378,100	198,200	198,200
Environmental Chemistry	-0-	203,253	203,253	165,343	165,343
Rehabilitative Psychology	-0-	330,079	330,079	142,938	142,938
Allied Health	-0-	235,800	235,800	22,217	22,217
Professional Services for Program Planning	50,000	-0-	(50,003)	-0-	(50,000)
Total Southern-BR	1,552,964	5,278,564	3,725,600	3,488,071	1,935,107
Southern-New Orleans					
Other Race Recruitment	50,095	50,177	82	50,095	-0-
Developmental Education	275,190	330,419	55,229	275,190	-0-
Professional Services for Program Planning	30,000	35,000	5,000	-0-	(30,000)
Co-operative Efforts	50,000	62,272	12,272	50,000	-0-
School of Social Work	62,420	398,567	336,147	288,626	226,206
Computer Science	83,796	172,908	89,112	171,758	87,962
Print Journalism	50,696	163,679	112,983	150,437	99,741

CONSENT DECREE FUNDING

Institution/Project	Budgeted 1982-83	Requested 1983-84	Difference	Regents Recommendation	Regents Recommendation Compared To 1982-83 Bud.
Transportation	34,976	88,126	53,150	76,286	41,310
Technology	34,267	86,260	51,993	75,248	40,981
Substance Abuse	68,816	107,095	38,279	94,854	26,038
Criminal Justice	45,496	89,934	44,438	74,943	29,447
Urban Studies	-0-	57,500	57,500	48,602	48,602
Total Southern-NO	785,752	1,641,937	856,185	1,356,039	570,287
Southern-Shreveport					
Other Race Recruitment	26,000	35,864	9,864	26,000	-0-
Developmental Education	81,955	102,016	20,061	81,955	-0-
Administrative Positions	-0-	98,093	98,093	96,339	96,339
Total Southern-S	107,955	235,973	128,018	204,294	96,339
Southern System Office					
General Enhancement	627,000	627,000	-0-	627,000	-0-
Faculty Development	230,000	230,000	-0-	230,000	-0-
Legal Fees	25,000	25,000	-0-	25,000	-0-
Total Southern System Office	882,000	882,000	-0-	882,000	-0-
SOUTHERN SYSTEM TOTAL	$3,328,671	$8,038,474	$4,709,803	$5,930,404	$2,601,733

TABLE II (Cont'd)

Page 5 of 5

CONSENT DECREE FUNDING

Institution/Project	Budgeted 1982-83	Requested 1983-84	Difference	Regents Recommendations	Regents Recommendation Compared To 1982-83 Bud.
LSU-Baton Rouge					
Co-operative Efforts	50,000	51,434	1,434	50,000	-0-
University of New Orleans					
Co-operative Efforts	50,000	32,938	(17,062)	50,000	-0-
Veterinary School					
Other Race Scholarships	15,000	35,000	20,000	35,000	20,000
Medical Center					
General Compliance	1,586,721	732,817	(853,904)	732,817	(853,904)
Minority Professional Scholarships	90,000	180,000	90,000	180,000	90,000
Total Medical Center	1,676,721	912,817	(763,904)	912,817	(763,904)
LSU-Alexandria					
Developmental Education	115,000	-0-	(115,000)	-0-	(115,000)
LSU SYSTEM TOTALS	$1,906,721	$1,032,189	$ (874,532)	$1,047,817	$ (858,904)
Board of Regents	$ 653,000	$ 515,000	$ (138,000)	$ 515,000	$ (138,000)
STATE TOTALS	$7,127,586	$11,144,321	$4,016,735	$9,052,511	$1,924,925

requested by the institutions, and the funding recommended by the Board of Regents, and included in the Regular Session, 1982 House Bill No. 158 for 1983-84 fiscal year is set forth in Table I. The amount recommended for each agency is shown in Table II.

The Louisiana State Board of Regents has recommended that the state funds $22,100,605 of Capital Outlay Projects for the predominantly Black institutions. The total Consent Decree projects recommended amounts to $25,600,605; the summary distribution is as shown in Table III, and the details of the recommendations appear in Table IV. A comparison of recommended funding with funding being considered by the Legislature for Southern University appears in Table V:

TABLE III	Board of Regents Recommended	Included in House Bills 459 and 460 Regular Session 1983
Predominantly Black Institutions:		
Grambling State University	$ 8,500,717	$ 8,635,000
Southern University	13,599,888	7,999,500
Total Predominantly Black Institutions	$22,100,605	$16,634,500
Other Institutions	$ 3,500,000	$ 4,100,000
Total Consent Decree Capital Outlay Projects	$25,600,605	$20,734,500

The benefit of the Consent Decree to Southern University and Grambling State University is now, and will be in the future, a function of the good faith of the State of Louisiana and its officials. If that good faith is limited to the tenure of the Decree, then, the enhancement of Southern

TABLE IV

CONSENT DECREE

GRAMBLING STATE UNIVERSITY	
Construction of the College of Nursing Building	$ 4,725,000
Planning for a New Business and Computing Center	552,000
Planning, Construction and Equipment for Phase II of the New Physical Plant	850,000
Planning and Construction-Repairs to Existing Utility Systems	1,906,608
Landscape and Facilities Master Plan Construction	80,000
Demolition of Buildings (9,10,11,14,15,20,21,23,27,47,57, and 103)	52,109
Planning for Renovation of Pinchback Hall	100,000
Planning for Renovation of Wheatley Hall	135,000
Planning for Renovation of James Hall	100,000
	$ 8,500,717
SOUTHERN UNIVERSITY-BATON ROUGE	
Construction of the School of Nursing Building	6,251,000
Planning for New Social Science Building	435,438
Planning for New Architecture Building	476,159
Planning for a Small Farms Reserach Center	154,800

TABLE IV CONT

CONSENT DECREE - continued

SOUTHERN UNIVERSITY-BATON ROUGE	
Planning for a New Special Education Center	$ 319,413
Master Plan Phase II, Analysis of Heating and A/C Systems	150,000
Demolition of Buildings (1,3,4,7,8,9,10,11,12,13,14,15,17,19,23,30,41,64, 75E,75W,80,87,92,94,149)	112,338
Relocation of the Physical Plant, Central Stores and Motor Pool	2,805,696
Renovation of Dormitory #81 (Planning and Construction)	145,685
Planning and Renovation of Physical Education Building #85	184,000
Renovation of Harvey Auditorium (Planning and Construction)	191,512
Renovation of Auditorium, Gymnasium (Planning and Construction)	540,468
Renovation of Azalea Dorm (Planning and Construction)	515,708
Planning for the Renovation of Grandison Dorm	96,000
SOUTHERN UNIVERSITY-NEW ORLEANS	
Continuation of Planning of a Multi-purpose Classroom Building	197,172

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TABLE IV CONT

CONSENT DECREE - continued	
SOUTHERN UNIVERSITY-NEW ORLEANS	
Installation and Renovations for Computer Equipment	$ 55,000
Planning for Renovation of the Old Science Building	70,000
Renovation of Cafeteria (Planning and Construction)	308,293
Renovation of University Center (Planning and Construction)	474,317
SOUTHERN UNIVERSITY-SHREVEPORT/BOSSIER	
Purchase and Installation of Computer Equipment	116,889
	$13,599,888
LOUISIANA STATE UNIVERSITY MEDICAL CENTER-SHREVEPORT	
Renovation of the Nursing School Building	3,500,000
	$25,600,605

COMPARISON OF FUNDING RECOMMENDED BY BOARD OF REGENTS AND HOUSE BILL 459 SOUTHERN UNIVERSITY CONSENT DECREE CAPITAL OUTLAY PROJECTS FOR 1983-84

PROJECT (SUBR)	1983-84 Recommendations From Board of Regents' Consent Decree Five-Year Capital Outlay Plan	House Bills 459, 460 Regular Session, 1983
Construction and Equipping of the School of Nursing Building	$ 6,251,000	$ 6,250,000 (Includes $600,000 for Planning, leaving $5,650,000 for construction)
Planning, Construction and Equipping of the New Social Science Building	435,438 For Planning (Construction recommended for 1984-85)	-0-
Planning, Construction and Equipping of the Center for Small Farm Research	154,800 For Planning	155,000 For Planning
Planning, Construction and Equipping of the Special Education Center	319,413 For Planning (Construction recommended for 1984-85)	-0-
Demolition of Buildings (1,3,4,7,8,9,10,11, 12,13,14,15,17,19,23,30,41,64,75E,75W,80, 87,92,94,149)	112,338	100,000
Relocation of the Physical Plant, Central Stores and Motor Pool	2,805,696	245,000
Renovation of Physical Education Building #85	184,000 ($2,023,860 recommended for 1984-85)	185,000
Renovation of Harvey Auditorium	191,512	190,000 (Includes $20,000 for Planning)
Renovation of Auditorium-Gymnasium	540,468	45,000

TABLE V

Page 2 of 4

COMPARISON OF FUNDING RECOMMENDED BY BOARD OF REGENTS AND HOUSE BILL 459 SOUTHERN UNIVERSITY CONSENT DECREE CAPITAL OUTLAY PROJECTS FOR 1983-84

PROJECT (SUBR CONT)	1983-84 Recommendations From Board of Regents' Consent Decree Five-Year Capital Outlay Plan	House Bill 459, 460 Regular Session, 1983
Renovation of Dormitories		
Azalea Dormitory	$ 515,708	$ -0-
Grandison Dormitory	96,000	
Dormitory #81	145,685	
Master Plan Phase II, Analysis of Heating and A/C Systems Campus-Wide	150,000	150,000
Planning, Construction and Equipping of the New Architecture Building	476,159 (For Planning) (Construction Recommended for 1983-84)	-0-
TOTAL	$12,378,217	$7,320,000

TABLE V

COMPARISON OF FUNDING RECOMMENDED BY
BOARD OF REGENTS AND HOUSE BILL 459
SOUTHERN UNIVERSITY CONSENT DECREE CAPITAL OUTLAY
PROJECT FOR 1983-84

PROJECT (SUNO)	1983-84 Recommendations From Board of Regents' Consent Decree Five-Year Capital Outlay Plan	House Bills 459,460 Regular Session, 1983
Construction and Equipping of New Multi-Purpose Building	$ 197,172 (For Planning)	-0-
Renovation of Old Science Building	70,000 ($718,524 recommended for 1984-85)	$ 75,000
Renovation of University Center	474,317	475,000 (Includes $45,000 for planning)
Renovation of Cafeteria	308,293	-0-
Installation and Renovations for Computer Equipment	55,000	-0-
TOTAL	$1,104,782	$550,000

TABLE V

COMPARISON OF FUNDING RECOMMENDED BY
BOARD OF REGENTS AND HOUSE BILL 459
SOUTHERN UNIVERSITY CONSENT DECREE CAPITAL OUTLAY
PROJECT FOR 1983-84

PROJECT (SUSBO)	1983-84 Recommendations From Board of Regents' Consent Decree Five-Year Capital Outlay Plan	House Bills 459,460 Regular Session, 1983
Purchase and Installation of Computer Equipment	$116,889	$129,500 (Recommended for renovations to accommodate computer equipment)
TOTAL	116,889	$129,500

University and Grambling State University will fall far short. Enhancement of a university is more than the remodeling and repairing of old and the building of new facilities, or the establishing of new programs of study. Enhancement is the improving of a school such that it provides in the highest way valuable educational experiences to all who enroll in it through viable program and course offerings. The Consent Decree must not be viewed alone as an instrument for the desegregation of higher education in the State of Louisiana, but more as an organ for the establishment of the higher education experience in the State of Louisiana on a plane where excellence in performance is commonplace.

If the increasing funding, the program expansion, and the capital improvements provided by the Consent Decree are limited in scope to the mandate of the law to desegregate higher education in the State of Louisiana, the Consent Decree is but an exercise in futility. The broader concerns of having ample manpower in the market places who are of all the ethnic types in the state and able graduates of all the state's institutions of higher education, graduates who can improve the quality of life in the State and create in it a higher social order must guide the behavior of the State and its officials.

There must be, too, a determination by the court to continue to monitor the behavior of the state's officials when the Consent Decree is terminated less there be a regression in the gains made by the Historically Black Colleges during the tenure of the Decree. The court, more than any other agency, has the best chance for seeing to it that the good faith created by law becomes good faith created by conscious.

In addition, great care must be exercised so there is no repetition of the experience regarding the Ph.D. program in Computer Science newly created in the State. The Louisiana Board of Regents recently approved a Ph.D. program in Computer Science for Louisiana State University. The State's Consent Decree Committee had made a commitment regarding new programs which provides that prior to the approval of any new programs at any predominantly white institutions the Board of Regents shall assess the impact of implementing the programs on the achievement of other-race enrollment goals at predominantly Black institutions. Clearly, Southern University-Baton Rouge was the better choice.

The Consent Decree is nothing more than a collection of words. It can become a living document only as its provisions are administered in good faith, even beyond its active period.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CIVIL ACTION
VERSUS * NO. 80-3300
STATE OF LOUISIANA, ET AL. * SEC. "A"

* * * * * * * * *

JOINT MOTION TO APPROVE AMENDMENT TO ADDENDUM TO CONSENT DECREE

NOW COME plaintiff, the United States Department of Justice, and defendants, State of Louisiana, Louisiana State Board of Regents and its Members, Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and its Members, Board of Supervisors of Southern University and Agricultural and Mechanical College and its Members, Board of Trustees for State Colleges and Universities and its Members, Board of Elementary and Secondary Education, and Bossier Parish School Board, through undersigned counsel, and upon showing the Court that the delayed entry of the Addendum to Consent Decree on September 3, 198~~3~~2 upset the timetable established therein and that the parties desire the entry of an Amendment to revise the timetable partially, jointly move the Court to approve, adopt and confirm an Amendement to the Addendum to Consent Decree, a copy of which is attached hereto and made a part hereof.

The undersigned hereby authorizes Barham & Churchill to affix his signature to the original pleading embodying the foregoing to be filed in the United States District Court.

4/26/83

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CIVIL ACTION
VERSUS	*	NO. 80-3300
STATE OF LOUISIANA, ET AL.	*	SEC. "A"

* * * * * * * * * * * * * * * * * * * *

AMENDMENT TO ADDENDUM TO CONSENT DECREE

Inasmuch as the delayed entry of the Addendum to Consent Decree ("Addendum") on September 3, 1982 prevented hiring of an assisting agency on August 15, 1982 as contemplated by the Addendum, the parties hereto have agreed to a revised timetable for compliance with the Addendum without altering any of their substantive commitments.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendants, State of Louisiana, et al., shall implement in good faith the commitments set forth below and that the parties shall be bound by the following:

I. Section One (A)(1)(c) (as amended): The assisting agency shall be employed no later than September 1, 1983 and its contract shall extend three calendar years from the date of employment.

II. Section One (A)(1)(c)(i) (as amended): The six-year institutional plan for the development of SUSBO shall be submitted to the Southern University Board of Supervisors for study and appropriate action no later than September 1, 1984, then submitted to the Board of Regents for comment by October 1, 1984, and re-submitted to the Southern University Board of Supervisors and the Board of Regents for approval by November 1, 1984.

III. Section One (A)(1)(c)(~~v~~5) (as amended): The Board of Regents shall adjust its five-year Capital Outlay Plan by November 1, 1984 to include the recommendations of the assisting agency as part of its highest priority as indentified in Part II, Section F.2 of the Consent Decree.

IV. Section One (A)(1)(d) (as amended): For the duration of this Addendum, program proposals submitted after the discharge of the assisting agency, without having been reviewed and recommended by it, shall include estimated planning costs, including costs of consultants, where necessary, and estimated cost of special equipment and facilities needed to implement and operate the program.

V. Section One (B)(1)(b) (as amended): The assisting agency shall give priority to making operative appropriate programs for the purpose stated in the Addendum by Spring, 1984.

VI. Section One (C) (as amended): In order to increase the other-race presence on their respective campuses, SUSBO and BPCC, in concert with the assisting agency, shall by the Spring of 1984 establish a common academic calendar and a cross-registration program.

VII. Section One (C)(2) (as amended): The assisting agency shall develop for implementation in Spring, 1985 a SUSBO-BPCC interinstitutional cooperative program with those components listed in the Addendum.

VIII. Nothing herein shall be construed to alter any provision of the Addendum not specifically addressed by this Amendment. Those provisions not specifically amended, including portions of sections and paragraphs wherein a revision has been made, shall remain in full force and effect. Most particularly, the commitment of the defendants to comply with the general provisions of the Addendum during its established term remains unaffected by the timetable revisions set forth herein.

The undersigned hereby authorizes Barham & Churchill to affix his signature to the original pleading embodying the foregoing to be filed in the United States District Court.

4/26/83
Date

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CIVIL ACTION
	*	
versus	*	NO. 80-3300
	*	
STATE OF LOUISIANA, ET AL	*	SECTION "A"

ADDENDUM TO CONSENT DECREE

Introduction

When a Consent Decree was entered in this case on September 8, 1981, there remained unresolved issues affecting postsecondary education in the Caddo-Bossier area. It was agreed that a five-member panel of experts would be appointed to study and make specific recommendations for the structure of public postsecondary education in the Caddo-Bossier area within seven months of the entry of the Consent Decree. The parties were allowed 45 days from the completion of the experts' study to review it and either settle all outstanding issues or, at the option of any party, petition the Court for resolution of the issues still in dispute.

On March 15, 1982, the appointed panel of experts submitted its report on and recommendations for postsecondary education in the Caddo-Bossier area (attached as Exhibit "A"), triggering negotiations among the parties. Agreement has been reached on all outstanding issues, as set forth herein. The parties waive the entry of findings of fact and conclusions of law, and each party agrees to bear its own costs.

After reviewing the terms of this Addendum to the Consent Decree, the Court has determined that it is consistent with the objectives of the Fourteenth Amendment and Title VI, and that its entry will further the orderly resolution of this case. It is the specific understanding of the parties and of this Court that neither this Addendum to the Consent Decree nor defendants' consent hereto constitutes an admission by defendants or an adjudication by the Court of any violation of law by defendants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendants State of Louisiana, et al., shall implement in good faith the commitments set forth below and that the parties shall be bound by the following:

Section One: Caddo-Bossier Area

A. Enhancement of Southern University Shreveport/Bossier City (SUSBO)

1. In keeping with the recommendations of the Caddo-Bossier Panel of Experts, the parties hereto resolve the issues addressed by the Panel on this basis:

(a) State Commitment: The State, in accordance with The Master Plan for Higher Education in Louisiana, agrees to make SUSBO a comprehensive community college, consistent with an institutional plan to be adopted by the Southern University Board of Supervisors. The State further agrees to provide the funding and support necessary to ensure attainment of this objective.

(b) New Positions: In 1982 and in each year for the duration of this Addendum, the State shall provide sufficient funds for the employment of a vice-chancellor for planning and development and a director of community services and continuing education, each of whom shall possess the credentials stipulated by the Caddo-Bossier Panel and whose duties shall include those proposed by the Panel, as well as any other duties outlined by the Southern University Board of Supervisors.

(c) Assisting Agency: The State shall provide to the Division of Administration no less than $450,000 for the employment of an assisting agency for a three-year period with an annual appropriation of no less than $150,000. The Southern University Board of Supervisors and The Board of Regents shall select an assisting agency, subject to the approval of the United States and the Bossier Parish School Board, to be nominated to the Division of Administration, which may employ the agency or instruct the parties to select and nominate an alternate agency. The selected agency shall have at least the following qualifications: a professional staff having special experience in working with community colleges and in designing for community colleges comprehensive plans consistent with the terms of this Addendum; and a demonstrated capacity for completing the required work within the time allowed. Any disapproval of the selected agency by the United States or the Bossier Parish School Board shall be based upon reasonable grounds. Any disapproval of the nominated agency by the Division of Administration shall be based upon reasonable grounds and a statement of such grounds shall be submitted to the parties at the time of the notice of disapproval. Any one of these parties who wishes to contest the selection or disapproval of same shall have recourse to the Court. The assisting agency will be housed at SUSBO, and its contract, to be drafted by the Division of Administration, shall extend through August 15, 1985. To expedite the employment of the assisting agency, the State agrees that the contract with the agency shall not be bound by the provisions of La. R.S. 39:1481 et seq. The assisting agency shall:

1) Prepare a six-year institutional plan consistent with the State Master Plan for the development of SUSBO into a comprehensive community college. In preparing this plan the assisting agency shall undertake such manpower studies and needs analyses as may be necessary. The plan shall be submitted to the Southern University Board of Supervisors for study and appropriate action, then submitted to the Board of Regents, the Bossier Parish School Board and the United States for comment by October 15, 1983, and re-submitted to the Southern University Board of Supervisors and the Board of Regents for approval by December 15, 1983.

2) Provide such technical and administrative assistance to SUSBO as may be necessary to accomplish the goal of SUSBO's becoming a fully viable, comprehensive community college, including the establishment of a modern information management system for SUSBO.

3) Make recommendations for new programs at SUSBO at the community college level to address the educational

needs of the Caddo-Bossier area. In addressing such needs, the assisting agency shall be guided by the report of the Caddo-Bossier Panel and the provisions of this Addendum.

As part of the institutional development plan, the assisting agency shall recommend and assist in the preparation and implementation of no fewer than twelve exclusive new programs at SUSBO on a timetable to be developed by the agency. In making its programmatic recommendations the assisting agency shall consider, but not be limited to, the following programs already proposed by SUSBO and the following one- and two-year programs in the allied health, data processing, and engineering technology clusters, as recommended by the Caddo-Bossier Panel:

Programs already proposed by SUSBO:

A.A. in Legal Assistant
A.S. in Small Business
A.S. in Early Childhood
A.A. in Day Care
  Administration
A.S. in Data Processing
A.S. in Computer Science
A.S. in Drafting and Design
  Technology
A.A.S. in Electronic Technology
A.S. in Physician's Assistant
Certificate in Emergency Medical
  Technician
Certificate in Nursing Assistant

Program clusters recommended by the Caddo-Bossier Panel:

Allied Health Programs-Options

Occupational Therapy Assisting
Physical Therapy Assisting
Respiratory Therapy Technician
Surgical Assisting
Emergency Medical Technician
Dental Assisting
Dental Laboratory Assistant
Medical Records Technician

Computer Science and Data Processing - Options

Data Processing Operators
Key Punching
Data Processing Programmers
Data Systems Analyst
Computer Systems Technician

Engineering Technology - Options

Scientific Instrumentation Technician
Engineering Laboratory Technician
Electronic Technology
Civil Engineering Technician

The State commits itself to SUSBO's offering a comprehensive community college curriculum. The State further commits itself to implementing no fewer than twelve exclusive new programs at SUSBO under the terms of this Addendum. The programs recommended by the agency and SUSBO, after approval by the Southern University Board of Supervisors, shall be approved by the Board of Regents in accordance with the State policy relative to academic quality as modified with respect to the 90-day notice of intent requirement.

4) The State agrees to fund new programs at SUSBO at a level to make the programs viable and capable of attracting students of all races. The institution shall prepare a proposal for each new program which will include, among other things, a description of the program, the estimated cost of implementing the program (including salaries for new personnel), and the projected implementation date. The proposal shall also include an estimate of the cost of equipment recommended by the assisting agency, the cost of any additional facilities required by the program as well as the cost of operating any such additional facilities. SUSBO shall work with the Board of Regents in determining the cost of each program.

5) Recommend such capital improvements as it deems appropriate for the successful implementation of the institutional plan for SUSBO. Its recommendations shall include appropriate new construction, renovations to existing structures, and for each program a list of necessary new equipment.

Recognizing the needs as expressed by the Caddo-Bossier Panel and to encourage other-race presence at SUSBO, the assisting agency, as part of SUSBO's institutional plan, shall recommend off-campus locations in the Shreveport area and identify geographic areas for off-campus instruction by SUSBO. Such programs shall be in concert with or in addition to approved programs offered on its campus and shall be in addition to any SUSBO offerings at BPCC. The state commits itself to the same implementation for these off-campus programs as provided in Section One A1(c)(4) above, and such programs shall be approved by the Board of Regents in accordance with the State policy relative to academic quality as modified with respect to the 90-day notice of intent requirement. It is agreed that SUSBO will establish a permanent presence at a site or sites other than its campus for the purpose of offering academic programs, and to achieve this commitment the State commits itself to secure, by purchase, donation or other title, or by long-term leasing arrangement, at least one renovated building for such off-campus offerings.

The Board of Regents shall adjust its five-year Capital Outlay Plan by January 1, 1984 to include the recommendations of the assisting agency as part of its highest priority as identified in Part II, Section F.2 of the Consent

Decree. As near as practicable, the Capital Outlay recommendations of the assisting agency, including any new and renovated facilities, will be funded and constructed during the term of this Addendum.

6) The assisting agency shall submit a quarterly written report to the Southern University Board of Supervisors briefly outlining the agency's progress to date and a summary of any problems or obstacles it foresees in carrying out its responsibilities. A copy of the report shall be forward simultaneously to the Bossier Parish School Board, the Board of Regents, the CDMC, and the United States. Nothing herein shall preclude more frequent reports to the Southern University Board of Supervisors as such reports are deemed necessary.

(d) For the duration of this Addendum, program proposals submitted after August 15, 1985, without having been reviewed and recommended by the assisting agency, shall include estimated planning costs, including costs of consultants, where necessary, and estimated cost of special equipment and facilities needed to implement and operate the program. The Board of Regents' approval of these programs shall be based on State policy relative to academic program review.

(e) The Board of Regents shall agree to recommend appropriate funding to the Legislature, allowing for inflationary increases for programs which will not be implemented immediately. To the extent that SUSBO has not completed during the term of this Addendum the implementation of approved programs as described in Section One A 1 (c) (3) or A 1 (d), above, the State shall maintain its commitment to develop and fund these programs.

(f) External Support: SUSBO agrees, to the extent possible, to reorient its grant under the federal Aid to Institutions Program (formerly Aid to Institutions with Developing Programs, Title III) to assist the State in meeting the goal of SUSBO's becoming a comprehensive community college.

B. Bossier Parish Community College

1. During the term of this Addendum the programmatic offerings at BPCC shall be as follows:

(a) Programs in operation at BPCC as of September 8, 1981, shall not be affected by this Addendum.

(b) The Bossier Parish School Board, the Board of Elementary and Secondary Education and the Board of Regents, subject to state policy, shall approve BPCC's adoption of two new programs: Certificate in Operating Room Technology and Associate of Occupational Studies in Data Processing. The Certificate in Operating Room Technology shall be a program wherein SUSBO may accept the credits awarded by BPCC in the clinical phase of the program from students who enroll in an appropriate coordinated curriculum at SUSBO. The assisting agency shall give priority to making operative appropriate programs for this purpose by fall, 1983. The LSU Medical Center shall work with the institutions and the assisting agency to assure coordination of curricula such that the Certificate in Operating Room Technology will provide a basis for an appropriate associate of science degree at SUSBO. The Associate in Occupational Studies in Data Processing shall be offered in cooperation with SUSBO in accordance with Section One C, infra. These programs may be developed without triggering the provisions of Part II, Section Seven E.1 and 2 of the Consent Decree.

(c) BPCC may participate with SUSBO in joint or cooperative associate degree programs as provided in Section One C, infra. For the duration of this Addendum, BPCC shall continue to offer only certificate and associate degree programs in occupational studies.

2. For the duration of this Addendum, any new programs proposed by BPCC shall be subject to the approval of the Bossier Parish School Board, the Board of Elementary and Secondary Education, and the Board of Regents. Except as provided in Paragraph 1(b) above, any new programs proposed by BPCC during the life of this Addendum shall be subject to the provisions of Part II, Section Seven E of the Consent Decree, shall not adversely affect the other-race presence at SUSBO, and shall not be programs which according to the Master Plan, this Addendum, or SUSBO's six-year institutional plan are within SUSBO's mission to offer.

3. With the exception of programs provided for in Section One B 1(b) above, which programs shall be cooperatively offered with SUSBO, BPCC shall not propose any exclusive certificate or associate degree program during the three-year period following the entry of this Addendum.

4. During the term of this Addendum, if BPCC prepares any plan or proposal for the development or implementation in academic year 1988-89 of new programs, BPCC shall submit a copy of the plan or proposal to the United States, all defendant boards and the CDMC at the same time as it is first sent to the Board of Elementary and Secondary Education or any other authoritative board. Each such submission shall include, at a minimum, the name, the HEGIS classification and a complete description of each program in question. The Board of Elementary and Secondary Education and any other authoritative board except the Board of Regents shall respond to any such plan or proposal from BPCC no later than September 1, 1987, and shall send a copy of the response to the United States, to all defendant boards and to the CDMC at the same time as the response is provided to BPCC. Any proposal which has not been approved by the Board of Regents on or before October 1, 1987 shall be presumed to have been rejected. With regard to any proposal approved by the Board of Regents, on or before October 1, 1987 the Board of Regents shall forward to the United States, with copies to all defendant boards, a full report detailing compliance with the standards for new programs set forth in Section One(B)(1)(c), supra and Section One(B)(2), above.

Any proposal not submitted by BPCC in accordance with this procedure before July 15, 1987 may not be submitted for approval until after July 31, 1988. Furthermore, BPCC shall take no steps to publicize or implement any program unless and until the program has been approved by each authoritative board. Programs which are expressly or presumptively rejected by the Board of Regents must be resubmitted to the Bossier Parish School Board, the Board of Elementary and Secondary Education and any other authoritative board for approval before they may be publicized or implemented, but may not be resubmitted before July 31, 1988.

5. By the fall of 1984 and for the duration of this Addendum, BPCC shall adjust its present tuition structure to a point equal to the present tuition and fee schedule at SUSBO, in accordance with the following schedule:

	1-3 hours	4-6 hours	7-9 hours	10-11 hours	12 or more hours
1982-1983	$30	$40	$50	$66	$75
1983-1984	$46	$65	$85	$103	$135
1984-1988	$62	$90	$120	$140	$197

For the duration of this Addendum, BPCC shall receive through the State Minimum Foundation Program the funding which that formula yields, but in any event no less than the amount of funds it received during the 1981-82 fiscal year ($1.1 million).

6. For the duration of this Addendum, the defendants agree not to interfere with BPCC's efforts to obtain accreditation.

C. Objectives for Cooperative Programs

In order to increase the other-race presence on their respective campuses, SUSBO and BPCC, in concert with the assisting agency, shall by the fall of 1983 establish a common academic calendar and a cross-registration program. SUSBO and BPCC shall further cooperate in student exchange, faculty exchange, in joint faculty appointments, in the establishment of joint or dual certificate and degree programs and in coordinated curriculum planning. To this end, the assisting agency shall:

1. Assist SUSBO and BPCC in implementing, insofar as feasible, a common data information system to facilitate cooperative planning, information exchange procedures and reporting;

2. Develop for implementation in fall, 1984 a SUSBO-BPCC inter-institutional cooperative program which shall have the following components:

(a) Other-Race Faculty Exchange: Each institution adopts the goal that, by 1984 25 percent of the white fulltime faculty at BPCC shall teach at least one course each academic year at SUSBO and an equal number of black fulltime faculty at SUSBO shall teach at least one course each academic year at BPCC.

(b) Other-Race Student Exchange: Each institution adopts the goal that, by fall, 1984 20 percent of BPCC's white fulltime students shall take at least one course each academic year at SUSBO's campus, and an equal number of SUSBO's black fulltime students shall take at least one course each academic year at BPCC.

(c) Dual or Other Cooperative Programs: During each academic year, SUSBO and BPCC shall operate no fewer than three dual or other cooperative programs. Upon approval of both institutions, no more than two additional cooperative programs may be developed. These programs shall be identified, planned and implemented by the institutions in concert with the assisting agency. The institutions and the assisting agency shall make all reasonable efforts to identify cooperative programs in which at least 25 percent of the course work will be offered by the supporting institution, with no more than 75 percent of the course work being offered by the lead institution. The Associate in Occupational Studies Degree in Data Processing identified in Section One B.1 (b), above, and all other cooperative programs shall be subject to the provision that the supporting institution offer at least 25 percent of the course work leading to the degree. SUSBO and BPCC shall be permitted to use each other's facilities for instructional and related purposes by mutual agreement and in implementing duly adopted recommendations of the assisting agency. Where a cooperative program leads to an Associate of Arts or an Associate of Science degree, SUSBO shall be the degree-awarding institution. Where a cooperative program leads to an Associate Degree in Occupational Studies, BPCC will be the degree-awarding institution.

D. Six-Year Enrollment and Employment Goals of BPCC and SUSBO

1. Enrollment Goals BPCC adopts the goal of increasing other-race enrollment to reflect the racial composition of Bossier Parish, and SUSBO adopts the goal of increasing other-race enrollment in step with the other predominantly black institutions according to the following schedule:

	Actual '81-'82		Projected '85-'86		Projected '86-'87		Projected Fall '87	
	%W	%B	%W	%B	%W	%B	%W	%B
BPCC		9.0		11.7		14.3		17.0
SUSBO			6.0		9.0		13.5	

2. Employment Goals BPCC and SUSBO adopt the goal that the proportion of other-race administrators, faculty and staff shall be increased. More specifically, BPCC adopts the goal that the proportion of black administrators, faculty, and staff members shall be equal to the proportion of black individuals with the required credentials in the relevant labor market area.

3. In seeking to reach their other-race enrollment goals, BPCC and SUSBO shall be entitled to take into account student participation in exchange programs on the following basis: each six credit hours taken by other-race students as part of an exchange or cooperative program shall be counted as if an other-race student had enrolled at the institution for a semester of course work. In seeking to reach their other-race employment goals, an institution shall not be entitled to take into account faculty members participating in the faculty exchange program.

4. BPCC shall take advantage of the services available through the Black Faculty and Professional Staff Clearinghouse.

E. LSU-Shreveport (LSUS) Effective at the end of the spring semester of 1982, LSUS shall terminate its associate degree programs in general studies, office administration, and criminal justice and shall accept no new students to these programs. Students currently enrolled shall be permitted to complete their respective programs. LSUS and other public institutions of higher education offering instruction in the Shreveport area shall not propose to offer in Shreveport any one- or two-year programs that would be in competition with programs offered by or proposed for SUSBO and/or BPCC.

F. LSU Medical Center The LSU Medical Center, and particularly the LSU Hospital and the LSU School of Allied Health Professions, shall assist and support SUSBO and BPCC with their allied health programs. More particularly, the Medical Center shall lend its support to SUSBO and BPCC in implementing needed one- and two-year programs in the allied health cluster. The assisting agency shall consult with the appropriate officials of the Medical Center with regard to any allied health programs that may be proposed or developed by SUSBO or BPCC, or both.

G. Shreveport-Bossier Vocational-Technical Institute SUSBO and the Shreveport-Bossier Vocational-Technical Institute, in concert with the assisting agency, shall seek to establish career ladder linkages as proposed by the Caddo-Bossier Panel. As reasonable and appropriate, the Shreveport-Bossier Vocational Technical Institute shall make available to SUSBO the Institute's facilities for instructional and related purposes.

H. Inter-Institutional Council The institutions named in this Section, SUSBO, BPCC, LSUS, the LSU Medical Center, and the Shreveport-Bossier Vocational-Technical Institute, along with the Northwestern State University College of Nursing, shall form the membership of the Inter-institutional Education Council proposed by the Panel of Experts for the Caddo-Bossier area. The Dean of the School of Allied Health Professions at the LSU Medical Center and the Dean of the Northwestern State University College of Nursing or their designees shall represent their respective institutions on the Council, with other members to be represented by the institutions' chief executive officers or their designees. The Council shall strive to effect improved communication, cooperative planning, and coordination of joint educational and training programs offered by member institutions in the Caddo-Bossier area. The Chancellor of LSUS shall convene the Council no later than February 1, 1983, and the Council may invite the participation or membership of other local institutions of higher education.

I. The Board of Regents shall review all freshman and sophomore program offerings in the Caddo-Bossier area by state institutions outside the area to assure that there is no unnecessary duplication of programs with the offerings of SUSBO and that there is no impact on the realization of SUSBO's mission.

3. Monitoring and Reporting For the duration of this Addendum, the CDMC shall monitor and shall report to the Court and the United States regarding compliance with this Addendum as provided in Part II, Section Eight of the Consent Decree. The CDMC shall remain operative for the purpose of supervising the implementation of this Addendum until its termination. In the final report to be submitted on or before August 15, 1987, the CDMC and BPCC shall both submit to the United States Justice Department and all defendants a list of any new programs which BPCC may have requested for implementation in academic year 1988-89 pursuant to Section One B 4, above. Whenever the Board of Elementary and Secondary Education or any other authoritative Board responds to any such plan or proposal from BPCC it shall send a copy of the response to the United States and to the Southern University Board of Supervisors, at the same time as the response is provided to BPCC.

Section Two: Provisions of the Consent Decree Adopted

A. Parts III, IV, V, VI and VII of the Consent Decree are hereby adopted as provisions of this Addendum, and shall have the same force and effect as if set forth herein.

B. The requirements of Parts IV and V(C) and (D) of the Consent Decree shall apply to BPCC, the Bossier Parish School, the Board of Elementary and Secondary Education and any other authoritative board in the same manner as the requirements apply to each defendant higher education board and the institutions it governs.

C. Those provisions of the Consent Decree not expressly referenced or adopted in Section One or Two of this Addendum shall be inapplicable to this Addendum.

ADDENDUM TO THE CONSENT DECREE entered into and approved at New Orleans, Louisiana on this _____ day of __________, 1982.

UNITED STATES JUDGE

UNITED STATES JUDGE

UNITED STATES JUDGE

Respectfully submitted:

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Mr. SIMON. Next, we are pleased to have John Casteen, the Secretary of Education for the Commonwealth of Virginia.

Pleased to have you with us, Mr. Casteen.

STATEMENT OF JOHN CASTEEN, SECRETARY OF EDUCATION, COMMONWEALTH OF VIRGINIA

Mr. CASTEEN. Thank you, Mr. Chairman.

Mr. Chairman, my State has a somewhat different relationship to the *Adams* case from that described by Dr. Stone in Louisiana. Virginia had a series of *Adams* plans, relatively brief, undetailed plans until 1978, when along with some six or seven other States, Virginia became subject to criteria developed in 1977 through 1978 by OCR on Judge Pratt's instruction in the Federal District Court in Northern Virginia, as ways to gage or measure State progress toward achieving the goals of title VI.

I have been asked today specifically to describe amendments to the 1978 plan, which we negotiated with OCR during the months between June 1982 and January 1983; second, to comment on our efforts to implement those amendments; and third, to comment specifically on enhancement of the traditionally black institutions in Virginia as an element of both the 1978 plan and the 1983 amendments.

In my prepared testimony, I have provided, first of all, a chronology of the events surrounding Virginia's involvement in the *Adams* case, and specifically beginning with February 1982, when our discussions with OCR on the top of amendments began.

The chronology is essentially continuous without a confusing element until March 24, 1983, which comes on page 2 of the prepared statement.

Prior to that date, specifically on January 27, 1983, the Commonwealth of Virginia and OCR on behalf of the U.S. Department of Education subscribed a negotiated set of amendments under which Virginia agreed to undertake certain enhancement activities in the traditional black institutions and also to carry out a general program of educational improvement directed toward enhancing the number of black students received from secondary schools to high schools, and from the point of entry on to graduation, and entry into professional schools.

The amendments involved a timetable of 3 years. The original 1978 plan, like all the OCR 1978 plans, was a 5-year plan. OCR advised me in February 1982 that in the judgment of staff, Virginia's progress between 1978 and 1982 was not sufficient.

OCR raised a number of objections to Virginia's procedures under the 1978 plan. We had prior to our first session with OCR undertaken our own review of the 1978 plan and come to the determination that while the plan had done some good, while it had addressed some educationally legitimate causes of disparate rates of entry and so on, the plan, itself, did not provide a sufficient basis for a comprehensive program to improve the very academic and social conditions that the plans are designed to improve.

Therefore, we offered in February 1982, to develop a new plan based on experience since 1978, and specifically attempting to address the educational causes of inequality and inequity as they had been identified in the years since 1978 by competent scholars who studied Virginia's own population.

OCR advised us at that point that the agency was not empowered to accept a new plan or to negotiate one. We continued talking.

In June 1982, Mr. Dodds, who is the Director of OCR's region III office in Philadelphia, and has been our primary link to OCR, advised me officially that OCR had found that Virginia's progress under the 1978 plan was not sufficient, and asked that Virginia develop amendments to the 1978 plan.

The committee will recall, I am sure, as we do that throughout 1982 and continuing into 1983, OCR and the counsel for the plantiffs in the *Adams* case, the Legal Defense Fund, carried on a series of legal maneuvers having to do with procedures for enforcement, for measuring progress and so on.

OCR's approach to us in June 1982 appeared to us to be related to the maneuvering between OCR and the Legal Defense Fund. In any event, we agreed to prepare the amendments, and we worked between June and September 1982 in close communication with OCR, frequently working face to face with OCR representatives around the table, but also working with the presidents and chief academic officers of our State-supported colleges, with admissions directors, with persons responsible for faculty hiring, with others able in some way to comment in an expert fashion on the progress under the 1978 plan to develop a set of amendments that went forward in the form of a supposedly confidential discussion paper to OCR in late September.

That paper, as perhaps the committee is aware, came into the hands of the press in Washington and became the subject of considerable public discussion. The paper was predicated on the notion that Virginia would begin its efforts to improve performance in the fall of 1982.

I should make clear that acting unilaterally, although with our encouragement, many of Virginia's colleges did begin specific measures in the fall of 1982, even though the amendments had not been accepted.

I should say further that early returns from those efforts suggest that our colleges have done a good job, and that, in fact, we will show substantial progress as a result of voluntary efforts that they began in the fall of 1982.

However, for whatever reason, we heard no response from OCR to those amendments until late December, specifically, until the day after Judge Pratt in chambers advised OCR and the Legal Defense Fund that he was prepared to discuss some kind of enforcement proceedings.

At that point, OCR, Philadelphia and Washington, called me to indicate that both offices would like to begin negotiating a final set of amendments.

We worked through the Christmas holidays. We met with OCR in Washington, and then for a long period of time in Richmond.

We had very productive working sessions and developed a set of amendments of which you have a complete copy in your package, and also a summary that begins on page 7 of the prepared statement.

That document was complete and prepared for signing on about January 18. The timing became very delicate at this point because Virginia's General Assembly in odd-numbered years meets for a very short time and considers only emergency supplemental appropriations.

We needed to have special moneys appropriated in order to implement the amendments, albeit late in the year for which they were first designed. We made two attempts to carry the amendments to our money committees.

In the first instance, a Thursday afternoon, I began a presentation at 4:30 with the understanding that OCR would provide an acceptance signature by 5 p.m., and that toward the end of my budget presentation to our House Appropriations Committee, I would be able to present the OCR funding as part of a general educational package.

As perhaps you know, OCR was not able to sign the amendments on that date for two reasons: A minor disagreement as to language, which we resolved very quickly the next morning by telephone; more importantly, the late discovery that the Legal Defense Fund was entitled to a 72-hour review period before OCR could officially accept amendments.

Consequently, we prepared a new text correcting the issues on which OCR had objection, resubmitted and went through almost the same procedure on the following Thursday when the committees agreed to hold special meetings in order to hear my request for funding for the amendments.

Sadly, once again, the meetings began without a firm acceptance from OCR. Midway in the session with our House Appropriations Committee, we received OCR's telephoned acceptance of the amendments.

I requested the funding and as, perhaps, the committee is aware, the legislature appropriated the necessary dollars exactly as requested and as an off-the-top appropriation in such a way that other educational appropriations do not compete with the OCR appropriations necessary for the fiscal year 1984.

The amendments, themselves, provided for a 3-year timetable, as I said. We had suggested a 5-year timetable.

Our reason for doing that was essentially educational, because a major element of the steps that we proposed to undertake in order to remove inequity and disparity, a major element of that is an attempt to improve the quality of high school curriculum, to see to it that black students and white students do not move through high school on differentiated tracks that have, as our studies indicate, the effect over time of, first of all, diminishing the chance that black students will enter college; second, if they enter, diminishing the chance that they will graduate; third, if they graduate, diminishing the chance that they will enter first professional or graduate programs after graduating.

In each instance, the evidence that we were able to develop told us that course choices made as early as the eighth or ninth grade had a major impact on the quality of opportunity available to all of our students, but especially to our black students in the year following high school.

So the amendments were predicated on the notion that the State would commit itself to improving its high schools as one element, not the only element, but as one element of the State's effort to address the problems in the plan.

The amendments that begin in summary form on page 7 include initiatives to improve general education in the State; curriculum changes; changes in teacher certification; a comprehensive program of guidance publications, which I should say to the committee, while not a glamorous element of the plan, is, in fact, an extraordinarily successful one as we field test the thesis and discover that, in fact, properly distributed information that makes clear what a family's responsibilities and options are, has a beneficial impact on our students.

Second, programs to improve the rate of entry of nonwhite, undergraduate students in higher education at large, and also to achieve desegregation on both traditionally white and traditionally black campuses.

Third, similar initiatives having to do with graduate students.

Fourth, special initiatives having to do with financial aid made available to other race students moving from community colleges to comprehensive 4-year institutions.

Fifth, a series of initiatives having to do with faculties, including a faculty exchange program, faculty development programs providing the first publicly funded sabbaticals in Virginia's history at our two traditionally black institutions, and other measures of that sort.

Sixth, programs to enhance our traditionally black institutions.

Here, I would digress for a moment, Mr. Chairman, because the background may be useful in comparing our situation to that of Louisiana.

Virginia has two TBI's, or traditionally black institutions. Virginia State University in Petersburg is an 1890 land-grant institution.

It offers a curriculum that features the traditional land grant programs, agriculture, technology, and so on. About halfway through its lifespan to this point, the university also became a major supplier of schoolteachers to the State's public school systems.

In recent years it has developed new programs in business and technological areas, in part as enhancement measures under the 1978 plan.

The last 3 years have seen significant declines in enrollment on the campus at Virginia State. The institution is currently underenrolled by something like 40 percent its optimal enrollment capacity.

It faces a problem not unique in American education, in that to some extent a declining student population, the peculiar effect of unavailable financial aid last fall, and several other factors, many of them economic, have combined to make it difficult for the university to maintain its enrollment.

The ability to maintain enrollment is a major ingredient in a university's financial well-being, because State appropriations generally assume that student tuition will support some part of the cost of education. That is the case of Virginia State.

The university suffers, in part, because of the shortfalls occasioned by the absence of students for whom the budget planned.

Norfolk State is a much newer institution. It is an urban university. It is in a growing region.

It has held its enrollment steady and increased somewhat in recent years. Both institutions under the 1978 plan did, indeed, build new buildings, did, indeed, renovate existing buildings, and did, indeed, provide new academic programs and enhanced academic programs.

The 1983 amendments extend that initiative by seeing to it that the enhancements in the term of these amendments will be designed in such a way as to guarantee specific and measurable outcomes. For example, the accreditation of a business program by a given date; acceptance of nursing degrees by the State licensure board by a given date.

The enhancements include not only faculty positions and salaries, but also moneys for necessary machine support in the case of programs that use computers and so on, and money for library enhancements; neither elements of the 1978 plan.

Seventh, there is a biracial consulting committee to provide expert advice on how the universities can position themselves better in the communities they serve.

Finally, there is a section having to do with what the State-supported universities must do.

I should say that the March 24 order creates substantial problems for us. For one thing, it is vaguely worded. It calls for substantial progress to be measured beginning in February 1984.

I have enclosed a letter dated March 29 from me to Mr. Singleton of OCR explaining why the timetable contained in the order creates a problem for us. I should say that based on transcripts of a February hearing, we understood originally that OCR prepared that particular order.

I have subsequently seen a draft of the order that OCR did prepare, and I shall tell the committee, as I have told the press, that OCR did not prepare the order that was delivered.

The problem with the order is that it seems not to address the realities of the academic calendar. Virginia's amendments were in place on March 24.

Another five or six States are to have amendments in place by late June as part of that order, and yet all are apparently to be measured on substantial progress that must be made in the fall of 1983 toward enrolling larger numbers of students.

That leads to a final observation that may be of some use to the committee. Title VI—and certainly Judge Pratt's orders with regard to title VI—made very clear that the goals and timetables in *Adams* orders are there primarily for purposes of management and primarily for improved performance.

The judge has never called the goals quotas. He has made very clear that he wants evidence of good faith efforts on the parts of the States.

A problem in the case is that the Legal Defense Fund in several of its arguments having to do with compliance, especially the arguments of the last 18 months, seems not to make a firm distinction between quotas and goals.

In fact, States that have begun programs, including my own State, that are producing some results and will produce more results as they extend over their normal lifespan are sometimes labeled as failures because the measurement system used seems more like that appropriate to a quota than to a goal.

The constant procedural maneuvering has been a constant source of distress for the States. Those of us who are committed to title VI believe firmly that equal opportunity is an important ingredient in any public educational system, especially those of us who believe that the public has a vital stake in seeing further enhancement of our traditionally black institutions.

Those with concerns of the sort that I have just summarized have found their work substantially harder to do because of the constant jockeying in and around the court with regard to how to measure, whom to measure, and when to measure.

My suggestion to the committee, I think, is that the conditions that we are looking at have to do with educational disparities, that one does not address an educational disparity that begins early in grammar school by imposing simply goals and timetables without other educational initiatives in the year after high school; and that a comprehensive approach of a kind never addressed in the 1978 plans and available for the first time, so far as we know, in our 1983 amendments, a comprehensive approach to schooling as a continuous experience in which students build at one level the success of the next level is the appropriate instrument of national policy if we wish to remove the kinds of disparity that we have talked about.

Other kinds of short-term measures are equally essential as part of a total program. We are carrying out those right now.

We are carrying on very intensive recruitment programs now, for example. But the larger approach, I would suggest to the committee, must be an educational approach that addresses the peculiar fact that students who enter programs regardless of our motives in inviting them into the programs without a solid academic foundation for the work required in the program have a poor chance of succeeding in the work required to graduate from the program.

The distance in graduation rates between our black students and our white students tell us very clearly that we have a problem. It is a problem common to virtually all of the States.

I suggest that good experience at this point—and not just ours, the college board's experience in the equality project, the kind of discovery that the national commission on Excellence in Education made in preparing its report that was released 2 weeks ago, and so on—good experience tells us that we neglect the high school to our peril if our purpose is to guarantee equality of opportunity for our students.

Thank you, Mr. Chairman.

Mr. SIMON. We thank you.

[The prepared statement of John T. Casteen III follows:]

Statement of John T. Casteen, III
Secretary of Education
Commonwealth of Virginia

Subcommittee on Civil and Constitutional Rights
Subcommittee on Postsecondary Education
Committee on Education and Labor
U.S. House of Representatives

May 17, 1983

My name is John Casteen. I am Secretary of Education of the Commonwealth of Virginia. In this capacity, I have since January 18, 1982, coordinated Virginia's efforts to comply with Title VI. A major component of our compliance is an Adams Case agreement negotiated in January - March 1978 between Virginia and the Office for Civil Rights, an agency of the U.S. Department of Education. I have come today to provide information on our compliance, and specifically on amendments negotiated between the Commonwealth and O.C.R. over the course of some six months prior to late January 1983, and officially accepted by both parties on January 27, 1983. I have attached to this statement the text of the amendments, as well as other documents related to them.

Chronology

The essential chronology of the events covered by my testimony is:

February, 1982	O.C.R. and Virginia begin discussions over results of the 1978 Plan; Virginia offers to draft a new Plan; O.C.R. indicates inability to accept a new Plan.
June, 1982	O.C.R. requires that Virginia prepare amendments to the 1978 Plan; Virginia agrees to do so.
September 10, 1982	Virginia submits discussion paper detailing proposed amendments; O.C.R. takes proposed amendments under consideration.
Late December, 1982	O.C.R. indicates desire to resume discussions.
January, 1983	With input from O.C.R., Virginia drafts revised amendments.

January 27, 1983	O.C.R. provisionally accepts Virginia's amendments; Virginia proceeds to appropriate funds effectively July 1, 1983, for first year; Virginia begins required administrative procedures.
March 24, 1983	Order entered by Judge Pratt (Deadlines for application for admission in fall 1983 are past except in open-enrollment colleges).
April 1, 1983	Admissions offers go out from colleges not on rolling system of acceptance notification.
May 1, 1983	Uniform Candidates' Response date.
July 1, 1983	Funding for amendments becomes available, as per written agreement with O.C.R.
September-October, 1983	Students matriculate in colleges.
October 20, 1983	Approximate census date for fall 1983 enrollments.
January-March, 1984	Deadlines for application for admission in fall 1983, except in open enrollment colleges.
February, 1984	O.C.R. to collect 1983-84 performance data.
April, 1984	O.C.R. to evaluate data collected in February, 1984.
May 1, 1984	Uniform Candidates' Response date.
September 15, 1984	O.C.R. to begin enforcement proceedings where indicated.
September-October, 1984	Students matriculate in colleges.
October 20, 1984	Approximate census date for fall 1984 enrollments.

Background

The context in which these events have occurred, while complex and difficult to reconstruct, matters. Secretary Bell is technically the defendant in the Adams Case. Throughout 1982 and continuing into the current year, the U.S. Department of Education has sparred in Judge Pratt's court with the Legal Defense Fund, which represented the original plaintiffs, and which came several months ago to represent a new set of plaintiffs admitted to the case in order to keep it from becoming moot by virtue of the termination of studies of all original plaintiffs. L.D.F. has argued that O.C.R. has not acted with sufficient vigor in enforcing Title VI. O.C.R. has argued that it has done as well as it can with limited resources, and that mere measurement of progress toward numerical goals (a gauge that L.D.F. has frequently cited) misrepresents the situation by ignoring both changing conditions of operation and conditions peculiar to the several Adams states.

None of the Adams states is currently party to the litigation. Yet all have been topics of discussion in the court during these months of contention between plaintiff and defendant. Each side has made and announced judgments about state actions and about how to deal with the phenomenon that none of the 1978 plans has achieved its committed objectives. For the states, this running battle over non-educational matters (yet in the context of an order that presumably hopes to achieve educational results) has been more than difficult.

Virginia is firmly committed to Title VI. We believe that we have good working relations with our colleagues in O.C.R. As I will explain shortly, we believe that O.C.R. has made progress in the past several months toward supporting initiatives that will work, as opposed to those required in 1978. At the same time, we have no special quarrel with L.D.F., whose many contributions to progress in civil rights we respect, and none at all with Judge Pratt, who has presided over a complex and (no doubt) frustrating case since 1969. Yet the continuing contest on procedural matters has all but obliterated the court's original purposes with regard to education. On March 24, 1983, the court issued an order that creates problems for all educational institutions because its timetables differ with the academic calendar.

Summary of Events

Our discussions with O.C.R. on the 1983 amendments began in February 1982, when officials from the O.C.R. office in the U.S. Department of Education's Region III office in Philadelphia informed us that Virginia's progress under the 1978 plan was a subject of concern. At the time, Virginia, too, had concerns about the 1978 plan.

Specifically, experience with the 1978 plan had shown us several ways to do a better job, and had born out my own concern that in certain respects federal requirements imposed in 1978 had made the job harder than it needed to be. Between 1978 and 1982, Virginia had indeed made good faith efforts to accomplish what was promised in 1978, and had made progress -- although less than either Virginia or O.C.R. wanted -- with regard to the goals developed in 1978, but O.C.R.'s criteria for acceptance of Adams plans had forced Virginia to accept in 1978 programs of action that had subsequently proved to be counterproductive.

In February 1982, I offered in behalf of the Commonwealth to prepare and submit a new Adams plan, grounded in experience since 1978, and in particular to attempt to address the educational inequities and disparities in secondary schools that sound scholarship identifies as the essential cause of what may be lingering vestiges of segregation. Virginia law and Title VI clearly prohibit artificial barriers to educational opportunity. All of Virginia's state-supported colleges and universities subscribed in 1978 to equal opportunity recruitment plans for students and faculty and to other measures intended to eliminate the possible vestiges of segregation. Sadly, the 1978 plan included no measures to strengthen secondary school preparation for college. Nor did it assign responsibility for linking secondary school and collegiate course programs in such a way as to guarantee that students would prepare at one level for success at the next. Nor did it set altogether realistic goals for enhancement of the TBI's.

(That the 1978 plan included no educational initiatives to address the causes of disparate rates of entry into college, rates of progress through college, and rates of progress from college to graduate or professional schools provoked considerable skepticism among Virginia's school and college leaders back in 1978. In fact, no Adams plan known to me included educational measures to address educational inequities until we submitted our 1983 amendments. The O.C.R. criteria address mechanical matters related to how to count, whom to count, and when to count, not substantive matters. For reasons unrelated to Adams, students generally have taken fewer substantive high school courses since about 1970 than they did before.

Studies conducted in Virginia since 1978 have established that our white students and black students typically pursue differentiated courses of study in high school, with white students more generally taking college preparatory courses and black students more generally taking "general" [neither college preparatory nor vocational] courses. Black students who take rigorous programs in high school enter college at a rate essentially identical to the rate for white students with the same courses, but the general pattern of distinction has guaranteed, especially in recent years, that fewer black students than white students were prepared to enter college. Moreover, studies conducted in open enrollment colleges consistently show that underprepared students more often than not do not graduate.)

O.C.R. advised us in February 1982 that it had no authority to consider a new plan, but that we could expect to hear further from O.C.R. about steps that might be taken to strengthen the 1978 plan.

During the winter and spring of 1982 L.D.F., and O.C.R. made several submissions to the court, L.D.F. contending generally that O.C.R. was not doing its job, and O.C.R. responding that it was doing what it could. On June 3, 1982, following additional (and productive) discussions, Mr. Dodds of O.C.R.-Philadelphia wrote to me that "several serious and longstanding problems with the implementation of the [1978] Plan" compelled O.C.R. to require Virginia to develop amendments to that document, particularly amendments having to do with recruitment of graduate and undergraduate students. Virginia agreed to prepare these amendments, and negotiations took place throughout the summer, culminating in our submission of a discussion document or draft in September 1982.

The September draft resembled the amendments actually accepted in January 1983 in essential ways. Most or all major points were actually negotiated at the staff level prior to the September submission. O.C.R. acknowledged receiving the draft in September, but otherwise made no response to it.

Throughout fall 1982, L.D.F. and O.C.R. continued to argue their respective positions in the court. The culmination of this exchange came in a hearing in chamber on December 17, 1982. In this hearing, L.D.F.'s lawyer argued for a contempt citation against Secretary Bell, and Judge Pratt, while expressing doubt about issuing the citation, set a hearing date in February for consideration of possible actions against both the U.S. Department of Education and the several Adams states.

Immediately following this hearing, Mr. Singleton of O.C.R.-Washington and Mr. Dodds of O.C.R.-Philadelphia both telephoned to let me know that O.C.R. was ready to negotiate acceptance of the amendments. We worked on preparations throughout the Christmas season. With staff members from the Office of the Virginia Attorney General and from the Council of Higher Education for Virginia, I met in early January in Washington with Mr. Singleton, Mr. Dodds, and members of the O.C.R. staff to agree on ground rules for final negotiations. Mr. Califa, representing Mr. Singleton, spent several days working in Richmond with our staff. By about January 18, the amendments reached what amounted to final form.

The days between January 18 or so and January 27, when Mr. Singleton officially signed the amendments in O.C.R.'s behalf, were hectic. Our schedule was tight because the amendments included moneys that the Virginia General Assembly, which was then beginning its off-year or short session, had to appropriate. We had agreed with both O.C.R. and our money committees that we would present the amendments at the earliest possible date in order to enhance our prospect of gaining the necessary appropriations. On January 20, I began my annual budget presentation to our House Appropriations Committee at 4:30 p.m. with the understanding that O.C.R. would accept the amendments before 5:00 p.m. so that I could request funding as part of my general presentation. Midway the presentation, we learned by telephone that O.C.R. could not, in fact, accept the amendments, partly because of minor objections to the language, but primarily because O.C.R. had lately learned that L.D.F. was entitled to a review period of 72 hours before any acceptance.

On the following day, we reached essential agreement with O.C.R. on the points found to be at issue on January 20. Late on the night of January 21, a Virginia State Trooper delivered the revised amendments [illegible] O.C.R.-Washington. As I understand the events, O.C.R. reviewed the document during the weekend, and delivered a copy to L.D.F. for review early in the following week.

Thursday, January 27, was the last day to ask for a new appropriation without also asking for consideration under extraordinary procedures. The timing was close, but at the last possible minute O.C.R. received the L.D.F. comments and completed its review, and Mr. Singleton signed the acceptance. In the Governor's behalf, I went late in the day to both money committees to request funding. Both houses passed the appropriation without notable dissent.

Finally, the Committee may be interested in the impact of Judge Pratt's March 24 order on Virginia's implementation of the 1983 amendments. In effect, the order collapses a negotiated timetable of three years to some eight - ten months, but it does so without stipulating what the states must do to show the "substantial" progress required. I have attached to my prepared testimony my letter of March 31, 1983, to Mr. Singleton. In this letter, I point out that the academic calendar is such that the order is inherently defective. We originally offered a set of amendments entailing educational reforms that ought to take place over about five years. Through hard negotiation, we agreed with O.C.R. on a three-year time table. The court's action collapses even this abbreviated timetable, albeit on vague terms, and thereby makes our job even more difficult.

Summary of the 1983 Amendments

I. General Initiatives to Improve Education

- to increase emphasis on academic fundamentals in secondary school curricula
- to continue review of standards for certification of teachers
- to review and update standards for accreditation of schools
- to enhance collaboration between the state-supported colleges and universities and the public schools
- to develop a comprehensive program of guidance publications to support effective counseling at all levels of schooling, with emphasis on the availability of choice and on the role of parents in planning

II. Undergraduate students

- to develop programs to increase enrollment of black students in the state-supported colleges and universities; to increase enrollment of black students in traditionally white institutions; to increase enrollment of white students in traditionally black institutions; to expand the Virginia Community College System outreach efforts to high schools
- in support of these general commitments, to promulgate goals by which to gauge progress toward increased desegregation in each of the three years covered by the amendments (appropriate tables, arranged by state-supported colleges and universities, appear in the amendments)
- to establish pilot summer transition programs for students who need intensive academic instruction in the summer between high school and college at George Mason University, James Madison University, University of Virginia, Virginia Polytechnic Institute and State University, and William and Mary.
- to include in the Funds for Excellence [a program administered by the State Council of Higher Education for Virginia] a subprogram to support innovative student recruitment and retention programs
- to sponsor at Virginia Commonwealth University a special conference on relations between white faculty and black students

- to complete a transfer guide for Virginia Community College System students
- to conduct a workshop on student retention

III. Graduate Students

- to complete a study of retention of graduate students
- to develop within 30 days goals and timetables by which to gauge progress in removing numerical disparities in graduate student bodies (these goals and timetables are to be arranged by institutions and disciplines)
- to establish a state-wide program to recruit graduate students
- to prepare and distribute sundry publications designed to inform college and university seniors about programs offered in Virginia's graduate schools
- to sponsor local programs of information for prospective graduate students
- to promote close relations between graduate and undergraduate departments in related disciplines throughout the state
- to double the number of student participants in the existing summer program for minority Virginians and to create parallel programs at Norfolk State University and Virginia State University
- To increase the size of the existing annual conference for prospective graduate students

IV. Financial Aid

- to establish a transfer student grant program for students moving from the Virginia Community College System to other-race senior state-supported institutions, with uniform eligibility criteria, the program to be administered by community college academic faculties

V. Faculties

- to require within sixty days detailed affirmative action plans for the faculties of all state-supported colleges and universities

- to establish a faculty exchange program between the traditionally black and traditionally white state-supported colleges and universities in Virginia

- to establish visiting professorships for distinguished other-race faculty

- to fund special faculty development programs at Norfolk State University and Virginia State University

- to publicize academic employment in Virginia among black graduate students and professors, and to inform Virginia's state-supported colleges and universities about available candidates for faculty positions

- to conduct a detailed study of non-retention of other-race faculty in state-supported colleges and universities

VI. Enhancement of the Traditionally Black Institutions

- to improve management at Virginia State University

- to improve physical facilities at Norfolk State University and Virginia State University (the detailed document specifies projects)

- to continue enhancing high-demand academic programs at Norfolk State University and Virginia State University (the detailed document specifies programs and enhancement measures)

- to develop properly justified outreach programs for Norfolk State University and Virginia State University

- to develop plans for a joint Virginia State University-Virginia Polytechnic Institute and State University extension program

- to develop and implement improved admissions and recruitment systems for Norfolk State University and Virginia State University

VII. Biracial Consulting Committee

- to restructure the existing committee to include both lay persons and specialists whose expertise may be of special value to the Commonwealth in implementing the Plan

- to assign to the committee specific tasks in support of the Plan

VIII. Actions to the Requested of the State-Supported Colleges and Universities

- to prepare revised student recruitment plans within thirty days

- to prepare revised faculty recruitment plans within sixty days

Enhancement of the Traditionally Black Institutions

Messrs. Simon and Edwards asked in their letter that I provide information on measures taken to enhance the traditionally black institutions (TBI's). Virginia has two such state-supported universities, Virginia State University at Petersburg, an 1890 Land Grant institution enrolling approximately 3,400 full-time and 1,125 part-time students, and Norfolk State University at Norfolk, an urban institution enrolling approximately 5,900 full-time and 1,400 part-time students. Both TBI's have multiple missions. Their service regions are, for example, both local and state-wide. Both have large numbers of commuting students enrolled in comprehensive undergraduate programs in the major disciplines. Both have well known specialized programs, including master's degree programs, that attract students from throughout the state. Both offer both foundation or remedial and conventional credit courses.

The 1983 amendments carry forward enhancement strategies set in the 1978 plan, but with significant refinements. The 1978 approach included both programmatic enhancements (new or upgraded degree programs, with sufficient resources to bring on new faculty) and capital construction. In many respects, the 1978 strategy has worked. Enhanced programs now exist in business, nursing, and engineering technology, for example. With regard to programmatic enhancements, the 1983 amendments differ from the 1978 plan in that they target fewer programs for more substantial enhancements. In each instance, the 1983 amendments detail specific goals (i.e., accreditation by a certain date, or acceptance of degrees by licensure boards by a certain date). The 1978 plan did not include funds for specific enhancement of library collections and support services. The 1983 amendments do.

In certain respects, the 1983 amendments address problems that became apparent under the 1978 plan. To deal with the need constantly to upgrade faculty skills and to promote original research, the 1983 amendments include the first state-funded sabbatical programs ever created in Virginia, as well as programs to support exchange of faculty among institutions. To deal with a significant enrollment decline at V.S.U. and with the need for modern recruitment capabilities at N.S.U., the 1983 amendments include specific enhancements of admissions offices. To deal with a significant management problem that developed at V.S.U. between 1978 and 1982, the 1983 amendments include funding for new personnel and for improved computer support.

The 1978 plan provided substantial new construction at both TBI's. At N.S.U., these improvements have taken place on schedule. At V.S.U., an internal disagreement concerning the design and use of a building slated for renovation has delayed completion of the 1978 building program. The 1983 amendments provide for additional capital expenditures in support of specific academic programs at each TBI In addition, they provide that the state will monitor completion of the stalled Hunter-McDaniel project at V.S.U.

Both TBI's still have substantial needs. N.S.U. faces rising enrollments, and has several high-demand programs that will require improved facilities in the future. V.S.U. has lost enrollment in recent years, and it faces a substantial federal claim with regard to allegedly improper management of financial aid programs. The staff of our Council of Higher Education and I continue to work with both TBI's to guarantee systematic development of comprehensive plans that will justify future legislative support, and (in the instance of V.S.U.) to assist campus officials in remedying identified problems and gaining optimal benefit from the enhancement budgets.

Summary Comments

It is obvious, I think, that many of the initiatives contained in the 1983 amendments are nothing more than sound educational policy. The schedules might have been different without O.C.R. and Adams, but Virginia would have moved in directions like these regardless of the case. The comprehensive publications program, for example, was one of Governor Robb's first educational initiatives. Enhancement of the TBI's makes [illegible] sense both as a remedy to past inequities and as a way to improve educational services to Virginians.

The time tables are another matter. We proposed a five-year time table because changing high schools takes time. O.C.R. apparently felt that L.D.F. would not accept a second five-year plan.. After long and hard bargaining, we agreed on three years, which was midway between our preference and O.C.R.'s, which was one year. Our position on this matter is that the 1978 plans have failed to achieve certain of their objectives because of the criteria, including the time tables, and not in spite of them -- that federal requirements made sound educational policy hard to develop under the 1978 plans. L.D.F., on the other hand, has wanted to treat the criteria as though they had the force of law, and consequently O.C.R. has been unable to accept educationally reasonable measures. Obviously, the March 24 order makes what we see as a short time table (three years) even shorter -- or seems to.

I should make clear that Virginia's colleges and schools have cooperated fully in our efforts to implement the 1983 amendments, notwithstanding the collapsing of the time tables. Acting on their own, many of the colleges have continued recruiting students well after their customary deadlines. Representatives of all of our four-year state-supported institutions are visiting community colleges now to seek additional other-race applicants for transfer admission -- and of course also to build firmer ties to the community colleges. Many new students have already been identified. While no one knows what the court means by "substantial" progress, I am confident that we have already made substantial progress, and that O.C.R.'s review next winter will support this judgment.

Our relations with O.C.R. since February 1982 have had their high points and their low points. Generally speaking, we have found O.C.R.'s negotiators to be diligent and forceful. O.C.R. has in no respect backed away from requiring full compliance with Title VI and with the court's orders. At the same time, O.C.R. has been willing to consider evidence from many sources to show that better ways exist to do the job. The low points of our dealings with O.C.R. probably came in late September or early October, when someone in Washington leaked the discussion draft after O.C.R. had asked us to keep it a confidential document pending final negotiations, and on January 20, when O.C.R. could not provide the promised acceptance signature. The high points have been numerous. Messrs. Dodds, Singleton, and their staffs have addressed very complex educational problems with us. They have worked diligently to understand the peculiarities of institutional governance in Virginia -- not an easy chore. They have suggested sources of technical expertise in several instances.

L.D.F. has sometimes been a problem. I have attached to this statement a copy of L.D.F.'s comments on the 1983 amendments, along with my response to those comments. From these documents, it will be apparent that we believe that L.D.F. missed the point of the amendments, and in addition criticized them on invalid grounds. L.D.F. may well have thought better of the matter. In the February hearing that preceded the March 24 order, L.D.F.'s lawyer omitted many of the less supportable allegations made in the written comments. Perhaps of greater impact, L.D.F. has seemed from time to time not to grasp the distinction between quotas and the goals and time tables appropriate in Title VI actions. The court has been clear since

1977 on the purposes of goals and time tables. My own analysis of L.D.F.'s various pleadings, as they are reported in the court documents, is that L.D.F. has consistently argued for enforcement proceedings on grounds that the numbers have not been achieved. That L.D.F. continues to construe goals as quotas complicates the case for everyone.

Ultimately, Virginia has attempted since January 1982 to work in partnership with O.C.R. (and indirectly with L.D.F. and the court, although we have no real link to either) to achieve genuine equity of opportunity in our state-supported institutions of higher education. We find little or no evidence that de jure segregation has left genuine vestiges in the state. Indeed, a study done in 1982 as background to our initial negotiations with O.C.R. identifies several causes of disparate entrance rates and the like. The after effects of de jure segregation in Virginia's state-supported colleges and universities are not among them. Economic deprivation, racially differentiated course programs in high schools, and other factors common to all states, not merely to Virginia, are high on the list.

Our compliance effort is part of a more general effort to improve schooling in the state for all of our students -- black and white, college-bound and vocational, rural, suburban, and urban. The report of the National Commission on Excellence in Education, the several publications of the College Board's EQuality Project, and virtually all other current analyses of how best to remedy the educational ills of recent years support the essential stance taken in the 1983 amendments. We are confident that we are building more viable futures for all of our children by working to eliminate the educational causes of educational disadvantage. We believe that O.C.R. has come to support the essential thesis that one cannot remedy long term educational disparities after high school, that instead one must begin early with sound curricula, clear guidance, and diligent instruction. We are confident that L.D.F. and the court will also adopt this approach as results become available.

1983 Amendments

Virginia Plan for Equal Opportunity
in
State-Supported Institutions of Higher Education

Submitted January 21, 1983

by

John T. Casteen, III
Secretary of Education
Commonwealth of Virginia

Preface

The following amendments to The Virginia Plan for Equal Opportunity in State-Supported Institutions of Higher Education, as revised in 1978, are submitted to the Office for Civil Rights in response to a request addressed by Dewey E. Dodds, Director of the Region III Office for Civil Rights, to Virginia Secretary of Education John T. Casteen, III, on June 3, 1982. This submission evidences Virginia's determination to improve the 1978 Plan to ensure equal educational opportunity through educationally sound and realistic measures.

Due consideration of certain essential features of Virginia's system of higher education must underlie an effective plan. Among these essentials are the statutory autonomy of our state-supported colleges and universities, the distinctive natures of our two traditionally black institutions (TBI's), the authority of our General Assembly and of the several boards created by that body to govern our state-supported colleges and universities, and the relationship of secondary and post-secondary education.

Much of what follows derives from a program of educational reform and emphasis undertaken by Governor Robb when he came into office. These amendments proceed on the fundamental principles that one builds at each level of education for success in the next, that students make informed choices as to how they will progress through school and college only when the links between levels are clearly explained and only after appropriate classroom instruction and counseling, especially in secondary schools.

Educational and social conditions, in Virginia and throughout the nation, have changed during the years since the Virginia 1978 Plan was approved. Despite the statistical trends alleged in Mr. Dodds' letter of June 3, it must be observed that Virginia's success in implementing the 1978 Plan differs in no significant respect from experience in other states, and that the condition of equal opportunity in Virginia's state-supported colleges and universities differs in no significant respect from the national record. The current statistical trends are in no sense a product of a lack of good faith commitment on Virginia's part or on the parts of Virginia's educational agencies and institutions. Notably, OCR has made no claim to the contrary.

Access to and success in post-secondary studies have changed in recent years. Educational opportunity for black students (and for Hispanic American, blue collar, inner city, and rural students) has not greatly improved in an era of quotas, goals, and other mechanisms intended to assure equality of access. National programs sponsored by the College Board, the Ford and Carnegie Foundations, and others attest a new climate of concern about the human costs of diminished emphasis on the traditional academic subjects in America's high schools.

These amendments have been developed over the course of six months in collaboration with specialists and practitioners in the field of education. They represent our best collective judgment as to steps that should succeed in light of changed circumstances since 1978. We do not believe that immediate or emergency solutions will reverse the statistical trends in Virginia in any efficient and meaningful way. Good solutions will address the essential nature of education.

We propose only the amendments stipulated herein. The elements of the 1978 Plan shall continue, except as superseded by these amendments.

We look forward to working with OCR and with the educational community in Virginia in implementing these amendments. We acknowledge and appreciate the assistance rendered us by the OCR staff while we developed these proposals.

General Initiatives to Improve Education

Background Statement

Virginia shares the concern of many educators that black students throughout the country have not gained as much educational ground in recent years as expected. Proportionally fewer black students than white students are reported to be graduating from high school, entering college, graduating from college, and entering graduate and professional schools.

Educational reform initiatives are widespread at this time, and Virginia has taken a prominent place in this movement. The Southern Regional Education Board's Task Force on Higher Education and the Schools, the College Board's EQuality Project, the U.S. Secretary of Education's call for a more rigorous approach to the academic basics, and sundry other initiatives reflect the recent realization that the nation must change its educational philosophy in order to achieve more positive results in our schools. In general, the formulators of these initiatives acknowledge the difficulties that confront black students in schools where substance, structure, and sequence have lost their rightful place.

Conditions have changed dramatically since 1978. Neither we nor OCR can predict the direction of change over the course of the next five years. What we can do, and will do as the Commonwealth's designated officials, is undertake every reasonable measure that will by realistic standards improve the statistical trends and at the same time ensure equal educational opportunity for all of Virginia's citizens. The following paragraphs describe efforts recently begun at the initiative of the Governor Charles S. Robb. They are evidence of the Commonwealth's commitment to improve educational opportunity for all of its students. The Governor has identified the pursuit of these initiatives, as well as the implementation of the more specific objectives described in these amendments, as priorities for the institutions of higher education during the 1984-86 biennium. Accordingly, the Governor will allocate resources to the institutions commensurate with their commitment to adopt and implement the objectives identified in this document. The attachment to these amendments includes materials from the Secretary of Education to the institutions outlining the Governor's priorities for 1984-1986.

Educational Reform in Virginia

Governor Charles S. Robb has set into motion a series of basic reforms in Virginia's schools and colleges. These reforms have been detailed at length in a series of major policy addresses, three of which are attached as an Appendix to this document. The essential features of these reforms include:

emphasis on early and effective remedial education in our public schools (an initiative funded in part by the 1982 General Assembly);

greater emphasis on the core academic subjects for all of our students, but especially for those who show promise of continuing their schooling (academic or vocational) after high school (also funded in part by the 1982 General Assembly);

greater clarity and pragmatism in college admissions standards with emphasis on telling students in advance what preparation is necessary to success in college and helping high schools promote programs of study that work (an initiative already addressed by several task forces of college and university faculties);

greater emphasis on effectiveness and quality in all college programs, with an eye toward improving graduation rates (initiatives undertaken by the Council of Higher Education);

a new emphasis on sound management in our colleges and universities;

adequate compensation for teachers and meaningful standards of competence for teachers (initiatives addressed in 1982 by both the General Assembly and the Board of Education);

and greater collegiality within education, and between education and the private sector, in support of joint educational and economic development.

Of particular importance with regard to the educational rights of black citizens are the following:

Increased emphasis on the academic basics. The Governor has pressed for a more complete high school program for all students. Over half of Virginia's high school graduates continue education after high school. Studies completed by the Tayloe Murphy Institute of the University of Virginia in connection with the 1978 Plan make clear that no more than half of those who go on have actually taken the recommended courses in high school.

The disparity between courses needed and courses taken is far greater for black students than for white students.

Revised standards for certification of teachers. The Board of Education, acting at the insistence of the General Assembly, revised its methods of certifying teachers in 1982. The new standards put greater emphasis on academic (as opposed to professional or method-based) training for new teachers, and on peer evaluations and review.

Revised standards for school accreditation. The State Superintendent of Public Instruction has proposed to the Board of Education a change from accreditation of schools on the basis of essentially physical standards (what a school *is*) to accreditation on the basis of educational quality (what a school *does*). The package of reforms includes provision for more and better courses in mathematics and science, subject areas in which black students have enrolled less often in recent years, and for a full-time attendance rule for all students except those excused by district superintendents. Like most states, Virginia has not required full-time enrollment in recent years. Consequently, many students choose to take less than a full load in the junior and senior years, and ultimately leave school without mastering the essential skills.

Expanded programs of collegial action within education. The Governor and Secretary of Education have promoted collaborative action to improve education. The Department of Education and Council of Higher Education have begun this year to sponsor special training sessions for secondary school guidance officers as well as seminars that bring together secondary school and college teachers and administrators in order to improve the information (including admissions and financial aid material) given to students from grade six through high school, to upgrade guidance services, and to make colleges and universities more responsive to the needs of high schools.

Publications programs. The Governor and Secretary of Education have begun developing new publications of a kind not previously available to students in American schools. Based on publications used in the schools of France, these publications will include a basic descriptive poster that will hang in every school room in the Commonwealth. This poster will show the broad pattern of education from pre-school through post-doctoral programs, with emphasis on how students can prepare at each level of education for success in the next. Related booklets will include one to be distributed to parents when new babies leave the hospital and others aimed at students and their parents at each point when students make major choices of what to study. A piece now nearly ready for the press standardizes the links between community college course programs and those of the four-year colleges so that students can plan their lower division studies with full knowledge of the entrance and graduation requirements of the senior colleges and universities to which they will eventually transfer. Each publication will stress the collective responsibilities of parents and children, the links between study at each level of education and what comes after, ways to change choices made previously, financial aid, and support available to students with special needs or interests.

Taken together, the Commonwealth's commitment to expanded programs of collegial action and publications is intended to ensure that students and their parents have early access to educational and career choice materials. To assist in publicizing the availability of this information, the Council of Higher Education and the Board of Education will produce and disseminate public service television and radio advertisements intended not only to announce where and how to obtain the information, but also to stress the benefits of attending college.

To implement the commitment in 1983-1984, the Governor will request $125,000 for the two activities. At least this amount will be requested for each remaining year during the life of the Plan.

Undergraduate Students

Background

Recent years have seen redoubled efforts to recruit other-race students to Virginia's state-supported colleges and universities, particularly to the senior traditionally white institutions. To emphasize its commitment, the Commonwealth voluntarily agreed in 1978 to establish numerical objectives under which the state pledged a good faith effort to enroll additional black students with two primary intentions: to achieve parity for the system as a whole; and to eliminate or decrease considerably the disparity in black enrollment at the traditionally white institutions, taken as a whole. To achieve the second objective, each TWI committed itself to attempt to recruit a specified number of additional black first-time students by the last year of the 1978 Plan (1982-83).

The Commonwealth and the individual institutions have, since 1978, acted in good faith to eliminate the disparity for the system and to achieve the numerical objectives specified in the Plan for the TWI's. We have made progress, but slowly, in part because because the pool of black high school graduates who are prepared for admission to college has not been sufficient to allow the institutions to meet the numerical objectives. A 1980 study conducted for the Council of Higher Education by the Tayloe Murphy Institute at the University of Virginia revealed that only 26.8 percent of our black high school seniors were enrolled in college preparatory programs, while 43.2 percent of the white high school seniors were enrolled in the college preparatory track.

To remedy this situation, these amendments include several proposals to improve the preparation of black (and other) students at the secondary level and to make certain that all students, beginning at least at the middle school level, are better informed about college opportunities (including admissions requirements) prior to entering high school.

A second, continuing problem for the Commonwealth has been an inability to resolve with the Office for Civil Rights the specific method by which Virginia's progress toward enrolling additional black students at the traditionally white institutions is to be measured. The 1978 Plan concentrates on first-time students. Its numerical objectives were developed from a disparity calculated from base numbers that included first-time in-state and out-of-state freshman students. Yet the Office for

Civil Rights' Criteria, which were published about the time the Plan was completed, specified that the disparity was to be calculated on the basis of first-time, in-state freshmen and transfer students.

To measure accurately the progress of Virginia's TWI's, the Commonwealth adopts in these amendments the method specified in the Criteria, as published in the Federal Register, in revising the numerical objectives. This method entails counting only in-state freshmen and transfer students in calculating the disparities and in measuring the progress of the TWI's toward meeting their objectives.

The Commonwealth's Commitments

1. Increasing the Enrollment of Black Students in the Statewide Public System of Higher Education

> Criterion: For two-year and four-year undergraduate public higher education institutions in the state system, taken as a whole, the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.

Virginia re-affirms her commitment to the objective that for two-year and four-year undergraduate public higher education institutions in the state system, taken as a whole, the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates who enter such institutions. In re-affirming this and other commitments in this section, the Commonwealth rejects accepting a "quota" for the system, for any group of institutions, or for any individual institution. Instead, the numerical objectives are established as evidence of Virginia's good faith intention to eliminate such disparities as may exist and as a means to measure progress toward ensuring equal opportunity for all citizens.

Virginia had 13,668 black high school graduates and 51,774 white graduates in 1978. In the Fall of 1978, as shown in Table 1, 4,292 black students and 20,749 white students enrolled as first-time freshmen in Virginia's state-supported colleges and universities. The proportion of white high school graduates who enrolled in the state-supported colleges and universities exceeded the proportion of black high school graduates who enrolled by 8.7 per cent. To reach parity in that year, the state-supported colleges and universities would have had to enroll an additional 1,185 black first-time students.

Through these amendments, the Commonwealth will attempt in good faith to eliminate any disparity for the system as a whole during the time covered by the revised Plan. The numerical objectives set later in this section for the traditionally white colleges and universities, taken as a whole, will assist the Commonwealth in meeting this goal. In addition, the Commonwealth will seek to eliminate the disparity by setting objectives for the two-year colleges.

In 1978, the two-year colleges enrolled 1,770 black freshman students to undergraduate study. This number was 41.2 per cent of the total number of black freshmen in the state-supported colleges and universities. Had the system enrolled enough black students to achieve parity in that year, the two-year colleges would have enrolled an additional 557 freshman black students. The Virginia Community College System and Richard Bland College will attempt during the term covered by these amendments to enroll an additional 557 black students. The numerical objectives for the individual community colleges and for Richard Bland College are displayed in Table 5.

2. Increasing the Enrollment of Black Students at the Traditionally White Institutions

> Criterion: There shall be an annual increase, to be specified by the state system, in the proportion of black students in the traditionally white four-year undergraduate public higher education institutions in the state system taken as a whole and in each such institution; and the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four-year undergraduate public higher education institutions in the state system [shall be reduced]. . . by at least fifty percent by the academic year 1985-1986. However, this shall not require [the] state to increase by that date black student admissions by more than 150 percent above the admissions for the academic year of 1978-1979.

The 1978 data reveal a disparity between the proportion of black and white seniors who graduated from Virginia's high schools and the proportion who enrolled as first-time students in the state-supported, four-year, traditionally white colleges and universities. The Commonwealth will attempt to increase annually the proportion of black Virginians enrolling in the state-supported, four-year, traditionally white colleges and universities as first-time freshmen and transfer students.

These colleges and universities had 1,092 "within state first-time freshmen and transfer enrollees" in 1978 (table 2). The pool of black high school and two-year college graduates in that year was 14,284. The entrance rate for black students into the senior state-supported colleges and universities was 7.6 per cent. In the same year, these colleges and universities enrolled 16,510 first-time freshmen and transfer white enrollees when there were 56,876 white high school and two-year college graduates. The entrance rate for white students was 29 per cent. The difference in entrance rates between white and black students was 21.4 per cent.

To meet its objectives under the OCR Criteria, Virginia must eliminate at least one-half of the difference in the 1978 entrance rate (10.7 per cent) or enroll 150 per cent more black first-time freshmen and transfer students than were enrolled in the TWI's, taken as a whole, in 1978. Actual entrance rates vary from year to year. Accordingly, one cannot determine in advance the number of students necessary to reduce the difference by 10.7 per cent in the last year covered by these amendments (1985-1986). The Commonwealth will, however, attempt to eliminate at least one-half of the difference (10.7 per cent) by the end of the Plan, but with the stipulation that it will not be necessary for the Commonwealth to enroll more than 1,638 additional first-time freshmen and first-time transfer students in order to satisfy this particular criterion. The total number of students who must be enrolled in order to meet the objective in the last year of the Plan is 2,730.

The numerical objectives for each institution appear in Tables 3 and 4. The institutional objectives are based on (1) the number of within-state black first-time freshmen and first-time transfer students at each TWI in 1978, (2) the difference between the entrance rate of within-state black and white first-time freshmen and first-time transfer students at each institution, and (3) the actual number of within-state black first-time freshmen and first-time transfer students at each institution in 1982. Since parity exists for the entrance rate of black first-time freshmen and first-time transfer students at Christopher Newport College and Virginia Commonwealth University, the 1982 enrollment level for these institutions was held constant for the remaining years of the Plan. As a group, the other TWI's will attempt to accomplish 25 percent of the total objective in 1983, 35 percent in 1984, and 40 percent in 1985.

It is important to note here the potential difficulty that Virginia will face in order to achieve the stated objectives over a three-year period. According to recent research on Virginia's high school graduates, only 26.8 percent of the black high school graduates had been enrolled in the college-preparatory program. Many of the activities (the Better Information Project, revised standards for school accreditation, publications program, etc.) described in other sections of these amendments are designed to address this problem. Five years is a more realistic period of time to increase the pool of students in high school who are prepared to move into college. Nonetheless, the traditionally white state-supported senior institutions will make a good faith effort to accomplish during the next three years the objectives set forth in these amendments.

To assist the state-supported colleges and universities in attracting and enrolling additional other-race, in-state, transfer students, the Commonwealth will establish a transfer students' scholarship program. This program will provide partial support for transfer students who graduate from the two-year institutions. The proposal is detailed in the Financial Aid section of these amendments.

The following understandings will be in effect during the years covered by these amendments:

a. 1978 data will be the base for the calculation of student enrollment disparities and the establishment of the numerical goals for the state-supported system as a whole and for any college or university or colleges or universities in it. The data to be used in determining disparities and in setting objectives for the state-supported system as a whole are "first-time freshman students within state only." The data to be used in determining disparities and setting numerical objectives for the TWI's, taken as a whole, are "first-time freshmen and transfer students within state only."

b. The Commonwealth's central objective is to eliminate the disparity in entrance rates for black students. The state will attempt to eliminate the entire disparity in the entrance rate of black students to the public system. For the TWI's, taken as a group, the Commonwealth may, by the last year of the Plan, eliminate one-half of the difference in the attendance rate between black and white students in 1978 (10.7 per cent). However, the maximum number of additional black "first-time freshmen and transfer students within state" to be enrolled by the TWI's, taken as a whole, in order to satisfy the appropriate criterion is 150 per cent greater than the number enrolled by these colleges and universities, taken as a group, in 1978.

c. In meeting the numerical objectives specified in these amendments, the colleges and universities may count first-time freshmen, regardless of when they graduated from high school, and (as appropriate) first-time transfer students from the two-year colleges, regardless of when they last attended the two-year college.

d. In assessing its annual progress, each college or university will be given credit for all unduplicated within-state, first-time freshmen and transfer students who enroll during either semester (or equivalent term) of the academic year.

The Council of Higher Education will collect data twice each year in order to measure annual progress. The yearly determination of Virginia's progress toward meeting the numerical goals in these amendments will be made in the August narrative report to OCR and not in the earlier data submission, which goes to OCR in February or March of each year.

e. In addition to unduplicated students who enroll throughout the regular session, a college or university may count, in the Fall semester, all in-state, first-time freshmen and transfer students who entered the institution during the summer term and who re-enrolled in the Fall.

f. These amendments will be in force for three years, beginning with the 1983-84 academic year and terminating with the conclusion of the 1985-1986 academic year. The three-year period, insisted upon by OCR, recognizes that real change takes time. Nonetheless, it may not provide sufficient time for Virginia's new educational initiatives significantly to increase the pool of black high school graduates eligible to enter college. In this interim period, therefore, the Commonwealth will focus on increasing transfer of black students from the two-year institutions.

g. Failure to meet a numerical objective shall not be prima facie evidence that the Commonwealth or any college or university has not acted in good faith to meet the objectives specified in this section.

3. Increasing the Enrollment of White Students at the Traditionally Black Institutions

Criterion: [Increase] the total number of white students attending traditionally black institutions.

The OCR Criteria indicate that "Increased participation by white students at traditionally black institutions must be a part of the process of desegregation of the statewide system of higher education." The 1978 Plan committed the Commonwealth to establish numerical objectives to increase white enrollment at the TBI's beginning in September 1979. Subsequently, OCR delayed implementation of this section until the two TBI's could begin to benefit from the state's efforts toward enhancement.

Because the 1978 Plan has been in effect for almost four years, during which time the state has provided significant funding to enhance the TBI's, the Commonwealth will now set initial numerical objectives for the enrollment of additional white students in the TBI's. The numerical objectives for white students at the TBI's are not final objectives, but interim benchmark numbers. Additional objectives will be established as the institutions gain strength and attractiveness to all students through improved facilities and academic programs. The initial objective for the TBI's, taken together, will be 15.5 per cent of total first-time freshman and first-time transfer enrollment, a proportion comparable to the representation of black students at the TWI's.

The interim numerical objectives for each TBI in the last year covered by these amendments are shown in Table 6. The distribution between the two TBI's of the additional white students needed in that year was determined on the basis of 1978 enrollment rates, under which 63.2 percent of the white first-time students in the TBI's were at Norfolk State University and 36.8 percent were at Virginia State University.The objectives for each year covered by the amendments are presented in Table 7.

4. Expanding the Virginia Community College System Outreach Efforts to High Schools.

The Virginia Community College System continues to play a major role toward providing equal access to higher education for all students of the Commonwealth. In 1978, the VCCS enrolled 1,730 black first-time freshman students. This number was 40.3 per cent of the total number of black freshman students at the state-supported colleges and universities. The Virginia Community College System will attempt to enroll an additional 507 black freshman students by the 1985-1986 academic year (the final year covered by these amendments).

To help achieve the above commitment, the VCCS will implement an outreach program to the high schools in Virginia. The primary components of the outreach program are outlined below.

1. Admissions personnel of each college will visit every high school in its service area with a substantial number of black high school students.

2. Students and counselors of the high school (with a substantial number of black students) in the college service area will be invited to the college campuses for special tours.

3. Information on college programs, financial aid, and career opportunities will be made available to students, counselors, and parents of high school students (with a substantial number of black students) in the service area of the college.

5. Developing a Program to Assist in Recruiting and Retaining Students: The Virginia Student Transition Program.

The Commonwealth will establish, in the summer of 1983, a Virginia Student Transition Program at selected senior state-supported institutions. The purpose of the program is to provide tutoring, instruction in study methods, and counseling for black Virginia students who have been accepted as full-time freshmen or transfer students and who have anticipated or actual academic deficiencies.

Although each participating institution will determine the students to be selected for its program, the focus will be on students who might be regarded as "high risk" students for that institution. Typically, a "high risk" student for purposes of this program is one whose Scholastic Aptitude Test (SAT) scores are lower than the average for the particular institution, whose high school grades may be slightly less than a "B" average, and whose immediate family may be economically disadvantaged or have had no previous college experience.

Initial state funding will be requested for a pilot program involving approximately 200 entering students, 40 each at George Mason University, James Madison University, the University of Virginia, Virginia Polytechnic Institute and State University, and The College of William and Mary. The student recruitment plans of these institutions will provide details as to how each institution proposes to implement the program. The Council of Higher Education, which reviews the plans and monitors their implementation, will continuously review this program and will evaluate its success at the end of its first year of operation. The Council's Admissions and Articulation Advisory Committee, composed of the chief admissions officers of the institutions, will assist in the review of the program. If the program is judged to be successful, additional funding may be requested to extend the program to other senior institutions which might wish to participate.

The Governor will request $200,000 for the operation of the program in 1983 and at least that amount, depending on the number of institutions participating in the program, for each remaining year of the Plan.

Because the state funds provided will be used solely for the operation of the program, the participating institutions will be encouraged to make available summer work-study opportunities for the students. In this way, the students will be able to compensate, in part, for any lost summer earnings and also be able to meet the student self-help expectation required of students applying for institutional financial aid for the academic year.

6. Assisting Institutions to Improve Their Student Recruitment and Retention Techniques: The Fund to Improve Student Recruitment and Retention.

The Council of Higher Education currently administers a Funds for Excellence Program under which the state-supported institutions seek special assistance for particular programs which are already judged to be of high quality or which have the potential for excellence. The funds are competitively awarded to the institutions, which submit proposals detailing how the use of such funds will enhance their programs.

The Governor will request special funding to establish a subprogram under the Funds for Excellence Program to encourage the institutions to put into operation imaginative and innovative student recruitment and retention programs. Although the institutions are heavily engaged in both activities at the present time, the limited state resources do not afford a broad opportunity for them to test new and different ways to attract and retain students, especially minority students, in the state system. The establishment of this subprogram will enable each institution to draw upon its collective knowledge and wisdom to prepare and submit proposals which offer alternative solutions to these problems. The ideas judged to be best can then be tested and the results shared with all of the state-supported institutions.

To initiate the program in the 1983-1984 academic year, the Governor will request $200,000. At least that amount will be requested for each remaining year of the life of the Plan. The institutions, in their student recruitment plans, will be asked to commit to participate in the program.

As part of its responsibility in administering the program, the Council will widely publicize the program at the institutions in order that faculty and staff who might have innovative recruitment and retention ideas will be encouraged to develop proposals. In addition, the Council will annually sponsor a dissemination conference at which the proposals which are funded, and the results of their implementation, may be discussed by officials from all of the institutions.

If, after funding proposals under this program in any given year, the Council determines that additional, unallocated funds remain, the Secretary of Education will approve the transfer of those funds to other programs under the Plan.

7. Holding a Conference on White Faculty and Black Students

The State Council of Higher Education and the Center for Improving Teacher Effectiveness (CITE) of Virginia Commonwealth

University will co-sponsor a conference during March, 1983. Three assumptions underlie the conference. First, faculty must become cognizant of their own race-related assumptions before they can teach black students more effectively. Second, faculty must be willing to treat race-related subject matter in appropriate courses frankly and directly. Third, if white faculty agree to help each other address racial issues, they are more likely to be successful teachers. The participation of key institutional faculty, particularly full-time senior faculty who are opinion leaders on campus and who have a personal commitment to the subject, will be sought. Institutions will be asked to send teams of two white faculty so that they can help each other implement the suggestions made in the conference. Such collaborative efforts to improve teaching will, we believe, lead to greater retention of black students.

8. Completing a Transfer Guide for Virginia Community College System Students.

Virginia higher education will publish a statewide guide of transfer policies between community colleges and senior institutions. The guide will contain (1) a description of the policies and procedures governing student transfer, (2) the Virginia Community College System degree programs accepted to transfer by each of the senior institutions, and (3) a listing of the VCCS courses accepted by each of the senior institutions. Publication will be in the Spring of 1983, with broad distribution primarily through community colleges.

9. Setting a Statewide Workshop on Student Retention.

A statewide workshop on student retention at Virginia's colleges and universities will be sponsored by the Council of Higher Education during the Fall of 1983. The workshop will develop an institutional model for student retention and will serve as a forum for the exchange student retention information among institutional representatives. Dr. Peggy Richmond, President of Research and Evaluation Associates, will assist the Council staff in planning the workshop. Dr. Richmond's assistance will be made available under a grant from the Office for Civil Rights. The initial planning will be conducted in February 1983.

Graduate Student Enrollments

Background Statement

Black students are disproportionally represented in virtually all graduate disciplines, with concentrations in education and certain social sciences, but severe disparities in most professional disciplines and particularly in the high demand disciplines of law, medicine, and business administration. In the core academic areas, black candidates for the Ph.D. are rare. By most reports, they are rarer now than they were in the past. These conditions are not peculiar to Virginia. Indeed, they persist throughout the nation, and they figure largely in current national efforts to improve higher education's performance with regard to the progress of non-white students.

The Commonwealth's Commitments

1. Retention Study. Before July 1, 1983, the Council of Higher Education will complete its on-going study of graduate enrollment and retention rates in all state-supported colleges and universities, and share the results with OCR.

2. Goals and Timetables. Within 30 days following the acceptance by OCR of these amendments, the Secretary will submit goals and timetables by which to gauge progress in removing the numerical disparities in graduate student bodies. These goals and timetables will conform to the graduate disciplines identified by OCR in the Plan.

3. Statewide Graduate Recruitment Program. The Governor will request $100,000 from the 1983 General Assembly to implement a comprehensive plan for the recruitment of students into graduate programs. The plan which will be developed before July 1, 1983 will include the following major activities:

a. the preparation and publication of a statewide guide to graduate education containing a detailed description of all graduate programs. It will be mailed to all third-year undergraduates in Virginia's colleges and universities by November 1, 1983;

b. the preparation of a companion publication to be mailed to all fourth-year undergraduates in Virginia's colleges and universities by March 1, 1984;

c. the sponsorship of local programs of information for undergraduate students and others interested in pursuing graduate work at each of Virginia's public senior colleges and universities; and

d. the implementation of efforts by the public senior colleges to promote close relations between graduate programs and departments offering related undergraduate majors.

The Governor will include appropriate funding in the 1984-1986 biennial budget to implement the plan. The Council of Higher Education will evaluate the plan and inform the Office for Civil Rights of the progress in the annual report.

4. Summer Programs. The Governor will include in the 1984-1986 biennial budget sufficient funds to double the number of student participants in the existing summer program for minority Virginians and to initiate an analogous program in the TBI's. This step will bring the total annual enrollment to 54 minority students in the summer program for the TWI's and to a comparable number in the program for the TBI's. The existing program, which the Council of Higher Education coordinates, enriches students' academic experience by placing them in courses at one of the comprehensive state-supported universities for one summer term. In excess of 50 per cent of previous participants have subsequently enrolled in graduate programs in the state-supported universities.

5. Conference for Potential Graduate Students. The Council of Higher Education will collaborate with the colleges and universities to sponsor an annual conference. (The Council has sponsored a similar program for some five years and will now increase its size.) This gathering will acquaint potential graduate students with available programs; provide information about careers in higher education in Virginia; and explain graduate school admission and financial aid procedures. This program will seek to attract at least 400 potential minority graduate students each year, with participants recruited from all state-supported colleges and universities. In addition, the Council will invite students from Virginia's private colleges to attend. The Governor will request $14,000 in 1983-1984 and a comparable amount in each year of the 1984-1986 biennial budget for this activity.

Financial Aid

The educational initiatives recently proposed by Governor Robb should result, within a three to five-year period, in a significantly increased number of black secondary students who are prepared to enter Virginia's state-supported colleges and universities. As these initiatives develop, however, Virginia will rely on improved articulation efforts between the two-year and four-year institutions in order to enroll the additional students necessary to meet the numerical objectives specified in these amendments.

Virginia has long recognized the importance of student financial aid as an essential equalizer of opportunity. (The term equalizer has been, in fact, prominently applied to the Commonwealth's entire system of higher education by former Governor Mills Godwin.) With regard to equality of opportunity, the Commonwealth acknowledges the uncommon success achieved by states or institutions that have targeted aid specifically for populations whose needs are clearly documented and whose preparation for further study attests their readiness to progress. At the request of the 1982 General Assembly, the Council of Higher Education has completed a study of the state student financial aid programs available to Virginia students. The Council has recommended modifications in the major state aid programs and proposed the establishment of additional grant and student employment programs. The Council's financial aid proposals will be important for all students and will be a crucial element in the Commonwealth's efforts to enroll additional black students.

In view of the critical short-term emphasis to be placed in this revised plan on the transfer of additional black graduates from the two-year to the four-year TWI's, the Governor will support a new program of financial assistance for these students. A description of the proposed program follows.

The Virginia Transfer Student Grant Program

The program will be open on entry into a TWI to any black graduate from an A.A. or A.S. program in a two-year state-supported college. However, to be eligible for consideration for an award, the student must have a minimum two-year college grade-point average (as of the beginning of the student's second quarter of the sophomore year, for enrolled students, or at the time of graduation, for students who have already graduated) of 2.50 (out of 4.0) and must, in addition, have demonstrated financial need. For purposes of this section of the amendments, a student who has accumulated credits sufficient for graduation from a two-year state-supported college and who has the stipulated grade-point average will be eligible for an award.

Currently, approximately one-half (about 300 students) of all black two-year graduates are annually transferring to the senior institutions. This program should not only increase that percentage but should result in more black students obtaining their two-year degrees and considering work on a baccalaureate degree.

The program will be evaluated in the third year of its operation in order to determine its effectiveness.

The cost of this program is $500,000 the first year, $1,100,000 the second year, and $1,300,000 the third year. This funding will provide for no less than 500 new grants in each year of the program's existence. The number of renewal grants in any year will depend on the number of eligible students continuing into their senior year. To ensure that a recipient of an award receives the grant, the institutions will include it as the first award (after the federal Pell Grant, if any) in the individual student's package of aid.

Approximately 80 per cent of the funds appropriated in a fiscal year will be distributed to the 24 two-year institutions. The Virginia Community College System Office will determine the allocation for each of its institutions, based on the proportion of black graduates from each institution. The remaining funds will be retained by the Council of Higher Education, the administering agency, to make awards to graduates of two-year institutions, or the equivalent, who are no longer enrolled at the institutions. All of the funds appropriated for the program will be used to make awards to students.

The Council will publicize the availability of the program in the media and at the two-year institutions. In addition, the Council will contact black social and civic groups and Chambers of Commerce to inform them about the program. The Council will use its Admissions and Articulation Advisory Committee to assist in administering the program and in selecting recipients for the program who are not currently enrolled in college. The Committee will also assist any students having difficulty transferring to a senior institution to find an appropriate institution.

Special Incentives to Increase White Enrollment in the TBI's

Despite the Commonwealth's enhancement appropriations, the TBI's have had difficulty enrolling additional white students. With the establishment of numerical objectives, the TBI's will need financial aid funds designated for white students. This program will target transfer students and provide partial support for both the junior and the senior years. The awards will be $1,000 per student per year. Recipients will be permitted to enter the TBI's from either two-year or four-year TWI's. Otherwise the requirements for receiving an award will be the same as for black students who receive awards to transfer from the two-year institutions to the TWI's.

The schedule of availability of these awards will be: first year--Norfolk State University, 20, Virginia State, 15; second year--Norfolk State University, 30, Virginia State University, 20; third year--Norfolk State University, 44, Virginia State University, 26. The total cost of the program will be $35,000 the first year; $85,000 the second year; and $120,000 the third year. The funds for the program will represent new dollars for financial aid.

The Council of Higher Education will monitor the institutions' administration of the transfer programs and will issue guidelines for this operation.

Faculties

Background

Several factors are commonly cited to explain the slow rate of progress in building larger cohorts of black faculty across the country:

a nationwide decrease in rates of entry of black students into graduate programs in most disciplines;

competition with other kinds of employment, especially business and industry, for new faculty members chosen from a diminishing pool of applicants;

disproportional concentrations of black graduate students in certain disciplines (*e.g.*, education) to the detriment of others;

feelings of isolation experienced by faculty and students in other-race institutions;

Regardless of causes that may vary from one locality or individual to another, certain key indicators detail the availability of applicants and the success of institutions that seek other-race faculty:

who actually enters, progresses through, and graduates from graduate schools in which disciplines;

how effectively institutions support probationary faculty members while they prepare for tenure decisions;

who fills the most prestigious positions within a department or on a campus;

how extensively faculty members know and respect the work of professors in related fields in other-race institutions.

These amendments include initiatives that have to do directly with faculty employment, promotion, and tenure and also that have to do with recruitment into graduate programs and support for graduate students.

The Commonwealth's Commitments

On OCR's approval of these amendments, the Secretary of Education will take the following initiatives:

1. The Commonwealth Faculty Exchange Program. The Secretary will initiate a short-term program to increase the number of other-race faculty in state-supported colleges and universities. The term "other race" refers to black faculty at the TWI's and white faculty at the TBI's. The planning for the program will be completed prior to July 1, 1983 so that the program can be implemented when funds become available. The major steps of the program are as follows:

a. The Secretary will establish a clearinghouse to receive and process applications for five sponsored faculty exchanges in 1983-1984 and 15 each year thereafter for the life of the Plan.

b. A brochure to announce and describe the program will be distributed to the state-supported institutions of higher education.

c. Policies and procedures describing the standards for the terms of service, salary supplementation, relocation allowances, faculty privileges, and other relevant information will be developed.

d. An average award of $5,000 and a relocation allowance of up to $2,500 will be granted to each recipient. In receiving the salary supplement, the recipient will provide consultative services to the Secretary of Education and the institution in the areas of faculty and program development.

e. The exchange will be for one year but is renewable. The exchanges will be targeted toward the program development of the TBI's.

f. An advisory committee consisting of institutional representatives will monitor the program.

The Secretary will monitor the program to ascertain that the persons exchanged between TBI's and TWI's are bona fide faculty members, that each institution promotes the program properly, and that each institution offers appropriate amenities for exchanged faculty members. The estimated cost of this program is $37,500 for the 1983-1984 academic year and $112,500 for the subsequent years during the life of the plan. The Governor will include funding in the biennial budget.

2. The Commonwealth Visiting Professorships, for senior faculty. The Secretary will develop a program of visiting professorships, each for a term of no less than one academic year and no more than two academic years. This program, which will seek qualified other-race professors nationally, will be designed to attract nationally distinguished, professionally established other-race faculty by offering superior salaries, reduced teaching loads, and funded research time for up to two academic years. The Commonwealth will establish a pool of 10 senior professorships in the care of the Secretary of Education, with salaries fixed at a level competitive with the market. Recipient colleges and universities will be obligated on receiving a Commonwealth Visiting Professor to initiate discussion of a possible permanent appointment at a senior rank. On successful completion of negotiations, Commonwealth Visiting Professors will become members of the host faculty, and host institutions will assume responsibility for their salaries and duties. The estimated cost of this program is $500,000 each year. The Governor will include funding in the 1984-1986 biennial budget. A brochure and a set of policies and procedures will be developed for the operation of this program.

3. The Commonwealth Faculty Development Program. The Secretary of Education will develop a long-range program to enhance the careers of faculty members in the TBI's. Research leaves, educational leaves, and relief from customary teaching duties for periods of up to three years will be funded for faculty members who may or may not hold terminal degrees. This program is primarily intended to assist the TBI's to develop the academic programs identified for enhancement and for future development. However, faculty from other, more established programs may also participate as resources permit. The Secretary will oversee this program, the estimated cost of which will be $120,000 in 1983-1984 and $250,000 each year of the 1984-1986 biennium.

4. Recruitment Initiatives. The Secretary will establish an ongoing national effort to identify non-white faculty members for academic appointments at the TWI's. The national effort will have several emphases. First, the Secretary of Education will request assistance from the Southern Regional Education Board and other consultative resources in identifying the pool of other-race faculty members in hard-to-locate disciplines. Second, Council of Higher Education staff will visit conferences, conventions, workshops, and seminars which are likely to attract large numbers of black faculty. The Council staff will provide the faculty who may be potential candidates for re-location in Virginia with a brochure describing the basic characteristics of Virginia's system of higher education and with other information which may

be helpful in attracting the faculty to the Commonwealth.. Council staff will then put prospective candidates in touch with institutional officials who have appropriate faculty vacancies.

The Secretary or the Director of the Council of Higher Education will write to the deans of major institutions with large numbers of black graduate students to notify them of Virginia's interest in recruiting black faculty. Through this means, the state-supported colleges and universities can establish early contact with larger numbers of potential faculty. Students who are referred to the Secretary or the Director by this means will be provided the information described above and placed in contact with appropriate officials at Virginia institutions.

Finally, Virginia institutions will advertise faculty vacancies in national media that are targeted to black professionals.

The administration of this program, as with the three faculty recruitment and development programs, will be coordinated with the advice and assistance of the Council's Instructional Programs Advisory Committee (IPAC), the committee of chief academic officers of Virginia's state-supported institutions.

The Governor will request $75,000 for the implementation of recruitment initiatives in 1983-1984. At least this amount will be requested for each remaining year during the life of the Plan.

5. Non-retention Study.

A detailed study of other-race faculty retention, non-retention, promotion, and tenure in state-supported institutions will be conducted by a committee consisting of representatives of the Council of Higher Education, the Department of Personnel and Training, and institutional officials.

The study will begin not later than February 27, 1983, and will be completed prior to July 1, 1983. On the basis of the findings, the Secretary will develop such other initiatives as may be appropriate. The estimated cost of the study is $2,500 for the 1983-1984 academic year.

Enhancement of the TBI's

Note: This section has two parts: a general discussion of enhancement of the traditional black institutions; and a more detailed section having to do with programs in support of secondary school outreach, admission of students, and retention.

Background Statement

The 1978 revision to the Plan calls for state action to enhance the two TBI's. The Commonwealth has acted in several ways to accomplish this goal. Most notably, the General Assembly has appropriated in excess of $25,000,000 to underwrite the cost of new construction, of renovation of existing facilities, of capital outlays of other kinds, and of the one-time expenses incurred when new academic programs are established. In addition, the General Assembly has appropriated 104 per cent of the established funding guidelines in support of the operating budget at Virginia State University and 97 per cent at Norfolk State University for 1980-1982, years when other institutions received only 93% of guidelines. In the current fiscal year, when allotments from appropriations have been reduced by 5 per cent because state revenues are not keeping pace with the projections on which the budget was based, the Governor has explicitly excluded the enhancement items and affirmative action programs from the reduction.

The two TBI's differ in essential ways. They do not require the same or even analogous approaches. Norfolk State has received more favorable reports from its auditors in recent years. Virginia State has a broadly developed faculty and plant, and the evidence indisputably suggests that Virginia State will require enhancement of its financial and managerial systems as a precondition to additional academic or programmatic enhancements. Development of a management structure able to make effective use of enhanced resources is at this time a necessary precondition to continued funding of Virginia State at a preferred level. In the absence of improved management, the university is unlikely to make meaningful progress toward enhancement regardless of the level of state support.

Both TBI's express the desire to have their roles in Virginia's system of higher education defined with greater clarity. The Commonwealth supports this desire. Virginia's state-supported colleges and universities monitor their own mission statements constantly and offer programs in support of these statements, and the Council of Higher Education reviews and approves or disapproves requests for new academic programs and for changes in mission statements.

Neither TBI is currently authorized to grant doctoral degrees. Neither is currently requesting of the Council permission to modify its mission statement to permit doctoral programs. Yet both have at various times expressed these desires, and either may be able in a short time to build its library and other resources to satisfy the accreditation requirements for doctoral programs. And either may be able to develop doctoral programs that will serve useful functions within the Commonwealth.

At the same time, colleges and universities have missions other than to offer degrees, and leaders of both TBI's have described enhancements that may support more extensive community service and outreach programs. Both TBI's believe that secondary education has deteriorated in their immediate communities; both report that they have had in recent years to develop larger programs of remedial or high school instruction in order to deal with deficiencies that used to be addressed by the high schools. Each has in recent weeks shared with the Secretary plans for intensified efforts to improve local high schools and to achieve greater effectiveness in campus remedial programs. Each has attempted in its own way to improve cohort progression and graduation rates, which have dropped below those reported by virtually all of Virginia's TWI's.

Both report local needs for business consulting, consumer services, in-service and other kinds of advanced, continuing training for professional persons (accountants, insurance professionals, and so on), and for other services by which the TBI's can grow in stature in the community and the community itself can gain needed cultural and economic strength. (Such services permit the institution to build community service on existing academic strength while also building future academic programs on the practical experience gained by faculty in the outreach activity.)

The Commonwealth's Commitments

1. The Commonwealth, in cooperation with Virginia State University, recently completed a management study of that institution. On OCR's approving these amendments, the Secretary will:

a. advise OCR and the General Assembly of the outcomes of this survey;

b. request at least $1,200,000 during the life of the Plan for additional personnel, training, and (where indicated) automated support for financial control and central administration in order to rectify the problems identified in the management study.

In addition, upon approval of these amendments, the Secretary will:

a. monitor expenditure of substantial sums for capital improvements at the TBI's. [For the 1982-1984 biennium, Norfolk State University received $4,665,000 to construct an Administration Building and $2,000,000 to renovate G.W.C. Brown Hall; other capital outlay items bring the total 1982-1984 appropriation to $8,144,520 for Norfolk State University. Virginia State University received $6,502,100 to renovate and add to the Hunter-McDaniel Building, $1,053,200 to renovate Singleton Hall, and $1,149,700 to renovate Johnston Memorial Hospital; other capital outlay items bring the total 1982-1984 appropriation to $11,924,670 for Virginia State University. Because the Commonwealth encountered severe financial constraints following the appropriation of funds for 1982-1984, the Governor found it necessary in October, 1982, to put a hold on all capital outlay projects not yet underway or out for bid. Reappropriations, including $4,044,000 reappropriated in 1982 as an element of Item C-245 (originally the 1980 capital outlay appropriation for construction and renovation of Hunter-McDaniel Hall at Virginia State), were not covered by the freeze. Nor were projects put to bid or begun prior to the effective date for the freeze. Nonetheless, sundry projects at the two TBI's were affected by this freeze. The Governor will submit a budget amendment to lift the freeze on the funds for Brown Hall at Norfolk State and will also release the new funds appropriated in 1982 for Hunter-McDaniel. This action is taken as a good faith gesture on the part of the Commonwealth and in recognition that the facilities are necessary to support the academic programs to be enhanced under these amendments. The Governor will release other capital projects as the Commonwealth's fiscal condition may permit];

b. monitor expenditure of substantial sums for enhancement of academic programs in 1982-1984 [$1,693,500 appropriated to Virginia State University and $1,271,500 appropriated to Norfolk State University. The two TBI's will revise their plans for the use of their curriculum enhancement funds in 1982-1984 to focus on strengthening those programs identified for enhancement. The programs include business and nursing (at Norfolk State University) and nursing, engineering technology, and business (at Virginia State University). Beginning in 1984-1985, the Governor will request that Norfolk State University receive additional enhancement funds for baccalaureate programs in management information systems and medical records management. All available enhancement funds in 1983-1984 will be directed toward accomplishing the following goals: the accreditation of the business program and the enrollment of substantial numbers of additional white students in both programs identified for enhancement at Norfolk State University; and the accreditation of the business and nursing programs, as well as the enrollment of substantial numbers of additional white students, in all three programs identified for enhancement at Virginia State University. In 1984-1986, the funds at Norfolk State University will also be used for the management information systems and medical records management programs];

c. include in the Governor's 1984-1986 budget $3,971,300 to complete renovation of Brown Hall at Norfolk State University and $2,443,000 to renovate Colson Hall at Virginia State University; [completion of Brown Hall will provide quality classroom, laboratory, and faculty office space, with improvements in heating, cooling, plumbing, and electrical systems; renovation of Colson Hall will provide quality classroom and faculty office space, with upgraded utility, heating, and ventilation systems and structural changes, for the School of Humanities and Social Sciences, which will occupy this structure following the removal of the Chemistry and Geology Departments to the renovated and expanded Hunter-McDaniel Hall]. The Governor's 1984-1986 budget recommendations for the two TBI's will also contain funds, in approximately the same amounts appropriated for 1982-1984, to continue the enhancement of the programs identified in these amendments. In addition, the Governor will request funds to improve the library collections at these institutions in the program areas which are being enhanced, particularly those which are being upgraded to meet accreditation or other appropriate standards.

d. commit that Virginia State University and Norfolk State University by 1985-86 will have facilities for all their programs that at least meet state planning space guidelines and are at least adequate for the needs of the programs. The Governor will take such stepr as necessary to request funds for renovations necessary to accomplish this.

2. The Secretary will ask the Council of Higher Education, which has statutory authority to approve requests for new academic programs, to provide assistance to the TBI's as they develop proposals for academic programs that show promise of enhancing them by attracting other-race students. The Secretary will also ask the Council to identify low demand, low productivity programs at the TBI's in order for the institutions to re-allocate the resources from such programs to those programs which are to be enhanced under these amendments. In addition, the Secretary will ask faculty and officials at appropriate TWI's to provide assistance to the TBI's in developing effective pre-medical, pre-legal, and pre-graduate business counseling

programs. By March 27, 1983, the Secretary (or the Council of Higher Education) will develop with Norfolk State University and Virginia State University a plan for the use of the program enhancement funds to ensure that these programs, by 1985-86, will meet accreditation standards in terms of faculty, facilities, and other material resources.

3. Norfolk State University will investigate the possibility of requesting federal funds, under the Title III (Aid to Developing Institutions) Program, to support its effort to obtain accreditation of its business program.

4. The Secretary will invite the TBI's to submit proposals for state funding of outreach programs built on strengths already present in the faculties and designed to meet demonstrated local needs. Outreach programs will be encouraged especially in areas where the TBI's can build on existing academic strength in order to enhance their standings in the community, including but not restricted to in-service education and other services to be rendered to public school teachers and support personnel, improvement of guidance services for middle and high school students, assistance to be rendered to small businesses, and continuing education for licensed professionals in sundry fields. The Governor will include funding to support appropriate outreach programs in the 1984-1986 biennial budget.

5. With Virginia State and Virginia Polytechnic Institute, the Secretary will develop plans for a joint cooperative extension program. On receiving an acceptable request for funding a joint program, the Governor will include such funds in the 1984-1986 biennial budget. The Secretary will request the two institutions to submit a draft plan for a joint program by July 1, 1983.

6. With regard to all specified enhancement activities, the Secretary will report regularly to OCR on progress.

7. The Council of Higher Education will monitor expenditures to ascertain that the institutions have discharged their responsibility for the proper use of enhancement funds.

Admissions Enhancements

Background Statement

One major obstacle to enhancement of the TBI's has been the absence of state-of-the-art admissions operations. Salaries paid senior admissions officers need to be brought to the level of those paid in the TWI's. Professional and classified staffs need to be made large enough to perform the vital functions of cultivating contacts with high schools, marketing the universities, counseling students, and linking admissions policy to campus academic policy. Machine support for admissions marketing and follow-up (word processing, functional data processing, with effective inquiry systems and capability to perform validity studies and to generate data of use to academic advisors) needs to be developed.

Institutional budgets for printing, mailing, and travel will need to be increased to the level of those provided in the TWI's. The TBI's need to arrange for staff training, for ongoing improvement of management, and even for attendance at state, regional, and national meetings of professional societies.

In one recent year, the admissions staff of one TBI was unable to secure funds from the central university administration to print applications for distribution in the fall, and subsequently unable to secure funds for postage to mail the applications when once they were printed. Neither office has access to functional word-processing equipment or the expertise to use such equipment, which is commonly available to the admissions offices of the TWI's. Neither TBI admissions office has a large enough staff to place an admissions officer in every Virginia College Day/Night Program. Consequently, the TBI's admissions message reaches only part of the Virginia high school population. In certain instances, individual admissions officers have paid personally for the TBI's to belong to the national organizations (the College Board, and the like) that provide professional support for admissions offices.

The cost of these deficiencies is threefold: The TBI's are less effective at delivering their message to high schools and at influencing high schools to promote courses of study that will prepare students for success after high school than are TWI's that make admissions effectiveness a top priority. The TBI's are less effective in the competition for students and especially for top students because fewer students know about them and fewer receive the kind of cultivation that marks the operations of the most successful TWI admissions offices. Students enrolled in the TBI's do not benefit by the kind of perpetual scrutiny of student performance and success that occurs in properly funded and managed admissions offices.

The Commonwealth's Commitments

On OCR's approving these amendments, the Secretary will convene an expert team of admissions professionals from outside Virginia. This team will work with the Secretary and the Council of Higher Education to review operations in the TBI admissions offices, and to propose specific enhancements addressing at least these issues:

professional and classified staffing levels required for expanded operations;

realistic salary levels for professionals at each level within the office;

word and data processing needs, including budget commitments necessary to support effective outreach programs and validity research programs;

adequate budgets for printing, mailing, travel, and periodic consulting services;

continuing needs for staff training and professional development, including summer courses, membership in and attendance at meetings and training programs of relevant professional associations.

On receiving the team's report, which will be completed by July 1, 1983, the Secretary of Education will invite the presidents of the TBI's to develop comprehensive plans for enhancement of the admissions and related operations in the TBI's. The cost of this program is estimated at $250,000 each year. Up to $10,000 will be used in each year for consultative services. The Governor will request funding for 1983-1984 and for each year of the 1984-1986 biennium. The Council will examine actual admissions budgets, staff lists, and annual reports to ascertain that the positions and dollars are used in admissions and are in addition to present expenditures for that purpose.

Biracial Consulting Committee

Background Statement

The Commonwealth recognizes the value of an independent committee charged with monitoring progress and proposing alternative solutions to problems. Such a committee ought properly to bring to its charge expertise and commitment, and ought to enjoy direct access to the Secretary, Council staff, and Governor. The "biracial citizens advisory/monitoring committee" will be reestablished to provide more effective guidance. The current committee's size (thirty members) and essential dependence on requests for assistance from third parties limits its effectiveness.

The Commonwealth's Commitment

On OCR's approving these amendments, the Secretary will assemble an _ad hoc_ committee of citizens and educators to identify nationally a group of seven-to-ten leaders who have demonstrated success in doing what the _Plan_ seeks to do. The Secretary will invite them to join a newly constituted Biracial Consulting Committee, and to make their services available as paid, expert consultants to the public schools and to the state-supported colleges and universities as they seek to implement the _Plan_. The Secretary will prepare a plan to assemble this Committee, to compensate members for their consultative services, and to broker their services to the public schools and to the state-supported colleges and universities. The Governor will include sufficient funding in the next following biennial budget.

Action to Be Requested of the State-Supported Colleges and Universities

On OCR's approving these amendments, the Secretary of Education will ask each state-supported college and university, including the colleges of the Virginia Community College system, to develop revised student and faculty recruitment plans. The plans will include (but not necessarily be restricted to) (1) elaboration of the methods by which the state-supported colleges and universities will attempt to meet their goals for recruitment of other-race students and faculty members and (2) a commitment to participate actively in the programs established by these amendments. The student plans will be submitted within 30 days following OCR's acceptance of the amendments, while the faculty plans will be due within 60 days. The Council of Higher Education will provide guidelines for the plans. The student guidelines are included in the attachments to this document.

As part of their student recruitment plans, each institutio will indicate commitment to visit at least once every year for the life of the Plan each high school in its primary service are which has a high enrollment of black students. If at the end of any year during the life of the Plan, an institution fails to meet its numerical objective for the enrollment of black students, the Council of Higher Education will review the institution's recruitment plan and advise on ways to improve it. Such ways may include all or any one of the following:

1. Visiting additional high schools with large populations of black students;

2. Re-allocating institutional funds for recruitment purposes;

3. Increasing the size of the admissions' staff;

4. Improving follow-up techniques in coordinating hig school visits.

An institution will amend its plan to take into account th Council's recommendations. In the annual report to the Office for Civil Rights, the Commonwealth will advise the OCR of amendments made to the institutional recruitment plans.

Conclusion

These amendments are not to be construed as an acknowledgment of the validity of the concerns, findings, or conclusions of OCR. These amendments shall not be interpreted so as to limit, alter, or modify the constitutional and statutory responsibilities of the Commonwealth, its respective officials, institutions, boards, and agencies. It is understood that near failure to reach a numerical goal shall not be evidence of any violation of law, or of the _Plan_, as amended.

In these amendments, Virginia has voluntarily utilized the _Adams_ criteria as guidelines only, and does not acknowledge that the criteria have the force of law as to it.

Tables and Attachments

Table 1 -- Within-State, First-Time Entrants to Undergraduate Study (Fall, 1978) at Virginia's State-Supported Institutions of Higher Education as a Proportion of Within-State, High School Graduates.

Table 2 -- Within-State First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1978) at Virginia's Traditionally White, Senior State-Supported Institutions of Higher Education as a Proportion of Within-State, High school, and Two-year College Graduates.

Table 3 -- Within-State Black and White First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1978) at Virginia's Traditionally White, Senior State-Supported Institutions of Higher Education as a Proportion of Within-State, High School and Two-Year College Graduates.

Table 4 -- Within-State Black First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1978-85) at Virginia's Traditionally White, Senior State-Supported Institutions of Higher Education.

Table 5 -- Within-State Black First-Time Freshman Students to Undergraduate Study (Fall, 1978-1985) at Virginia's Two-Year State-Supported Colleges.

Table 6 -- Within-State White First-Time Freshman and Transfer Students to Undergraduate Programs at the Traditionally Black State-Supported Institutions of Higher Education.

Table 7 -- Within-State White First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall, 1978-1985) at Virginia's Traditionally Black, Senior State-Supported Institutions of Higher Education.

Within-State, First-Time Freshman Entrants to Undergraduate Study (Fall, 1978) at Virginia's State-Supported Institutions of Higher Education as a Proportion of Within-State, High School Graduates

	Virginia High School Graduates in Spring and Summer, 1978	Within-State First-Time Entrants in Fall, 1978			Entrance Rates For Fall, 1978		
	High School	Two-Year	Four-Year	Total	Two-Year	Four-Year	Total
ack	13,668	1,770	2,522	4,292	12.9	18.5	31.4
ite	51,774	8,816	11,933	20,749	17.0	23.1	40.1
her	915	145	223	368	15.8	24.4	40.2
tal	66,357	10,731	14,678	25,409	16.2	22.1	38.3

Actual ack Freshman Entrants to ergraduate Study in Fall 1978	Total No. of Black First-Time Freshman Students Needed to Achieve Parity	No. of Addit'l Black First-Time Freshman Students Needed to Reach Parity	Provisional Objective for Freshman Entrants to Undergraduate Study	% Increase Over 1978 Black Entrants
4,292	5,477	1,185	5,477	27.6

tes: (1) Two-Year and Four-Year Public Colleges and Universities

$$\frac{x}{13,668} = \frac{20,749}{51,774}$$

$$51,774\ x = 283,597,332$$

$$x = 5,477$$

5,477 (No. of black freshmen needed for parity) - 4,292 (actual black freshman enrollment) = 1,185 (the additional black students needed for parity).

(2) Two-Year Public Colleges

$$\frac{x}{13,668} = \frac{8,816}{51,774}$$

$$51,774\ x = 120,497,088$$

$$x = 2,327$$

2,327 (No. of black freshmen needed fo parity) - 1,770 (actual black freshman enrollment) = 557 (the additional blac freshmen needed for parity).

ta Source: OCR40000 B1 and Final Secondary and School Report 1977-78.

Table 2

Within-State First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1978) at Virginia's Traditionally White, Senior State Supported Institutions of Higher Education as a Proportion of Within-State, High School, and Two-year College Graduates

	Two-Year State-Supported College and High School Graduates in Spring and Summer 1978	Within-State First-Time Freshman and First-Time Transfer Enrollees in Fall 1978	Entrance Rates for Fall 1978
Black	14,284	1,092	7.6
White	56,876	16,510	29.0
Other	1,022	315	30.8
Total	72,182	17,917	24.8

Actual Black Freshman Entrants and Transfers to Undergraduate Study in Fall, 1978	Total No. of Black First-Time Freshman & Transfer Students Needed to Achieve Parity	Actual Disparity in in 1978	Provisional Objectives for Freshman & Transfer Entrants to Undergraduate Study	No. of Addit'l Black First-Time Freshman & Transfer Students Needed to Increase Current Enrollment by 150%	% of Increase Over 1978 Black Entrants
1,092	4,146	3,054	2,730	1,638	150.0

Notes: (1) $\frac{x}{14,284} = \frac{16,510}{56,876}$

$56,876\ x = 235,828,840$

$x = 4,146$ (no. of black first-time freshman & transfer students needed for parity)

(2) 4,146 (no. of black first-time freshman & transfer students needed for parity) - 1,092 (actual 1978 black enrollment) = 3,054 (disparity)

(3) 150% increase over current enrollment (2.5 x 1,092 = 2,730)

(4) 2,730 - 1,092 (actual enrollment) = 1,638 (additional black students needed).

(5) The two-year college graduates included those students who finished a degree program (AA, AS, AAS).

Data Source: CR4000 B1, Final Annual Secondary School Report 1977-78

Table 3

Within-State Black and White First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1970) at Virginia's Traditionally White, Senior State-Supported Institutions of Higher Education as a Proportion of Within-State, High School and Two-Year College Graduates

	Actual Black Freshman Entrants and Transfer Undergraduate Study in Fall 1970	Total No. of Black First-Time Freshman & Transfer Students Needed to Achieve Parity	Actual Disparity in Fall 1970	No. of Additional Black First-Time Freshman & Transfer Students Needed to Reach Enrollment Objectives	Provisional Objectives for Freshman and Transfer Entrants to Undergraduate Study
CNC	62	155	93	47	109
CVC	6	48	42	22	28
GMU	68	548	480	240	308
JMU	69	397	328	164	233
LC	18	175	157	79	97
MWC	8	126	118	64	72
ODU	167	399	232	116	283
RU	39	321	282	142	181
UVa	105	446	341	171	276
VCU	404	409	5	104	508
VMI	8	49	41	21	29
VPI&SU	110	885	775	387	497
W&M	28	188	160	81	109
Total	1,092	4,146	3,054	1,630	2,730

Notes: (1) The method used in Table 5 was applied to the two-year state-supported college and high school graduates and the first-time freshman and first-time transfer students at the traditionally white, senior state-supported institutions of higher education in Fall, 1970.

(2) The data source was the OCR 4000 B_1..

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Table 4

Within-State Black First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1978-85*) at Virginia's Traditionally White, Senior State-Supported Institutions of Higher Education

	1978	1979	1980	1981	1982**	1983	1984	1985
CNC	62	88	96	106	156	156	156	156
CVC	6	6	8	8	2	8	15	20
GMU	68	62	80	90	57	118	203	300
JMU	69	38	77	41	96	129	175	225
LC	18	33	18	27	39	52	70	90
MWC	8	14	28	18	20	32	48	65
ODU	167	224	193	206	184	207	239	276
RU	39	44	51	55	34	69	118	174
UVA	105	139	142	163	113	152	207	269
VCU	404	556	558	517	541	541	541	541
VMI	8	6	11	7	14	16	19	22
VPI	110	168	172	189	183	260	368	490
W&M	28	29	21	21	28	47	73	102
TOTAL	1,092	1,407	1,455	1,448	1,467	1,787	2,232	2,730

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* Actual enrollment is displayed for 1978 and projected enrollment is displayed for 1983-85.

** Preliminary enrollment is displayed for 1982.

Table 5

Within-State Black First-Time Freshman Students to Undergraduate Study (Fall, 1978-1985*) at Virginia's Two-Year State-Supported Colleges

Name of College	1978	1979	1980	1981	1982**	1983	1984	1985
Blue Ridge	15	14	14	13	12	14	15	16
Central Virginia	42	50	19	23	12	14	15	16
Dabney S. Lancaster	3	3	0	1	5	6	6	7
Danville	43	41	45	42	38	4[illegible]	47	50
Eastern Shore	5	3	31	1	4	5	5	5
Germanna	17	32	26	36	18	20	22	24
J. Sargeant Reynolds	250	337	258	251	313	353	384	415
John Tyler	22	54	30	35	167	188	205	222
Lord Fairfax	15	18	26	12	10	11	12	13
Mountain Empire	3	4	3	3	6	7	7	8
New River	23	38	31	34	17	19	21	23
Northern Virginia	29	57	49	48	72	81	88	96
Patrick Henry	31	61	58	43	33	37	40	44
Paul D. Camp	139	83	53	97	94	106	115	125
Piedmont Virginia	29	30	9	75	27	30	33	36
Rappahannock	62	73	77	62	53	60	65	70
Southside Virginia	86	109	100	79	84	95	103	111
Southwest Virginia	14	11	7	5	12	14	15	16
Thomas Nelson	296	310	283	297	315	355	386	417
Tidewater	556	495	342	314	329	371	404	437
Virginia Highlands	2	5	7	2	7	8	9	9
Virginia Western	39	44	82	69	57	64	70	76
Wytheville	9	6	14	19	1	1	1	1
Total-VCCS	1,730	1,878	1,564	1,561	1,686	1,902	2,068	2,237
Richard Bland	40	45	62	66	56	65	77	90
Total-Two-Year	1,770	1,923	1,626	1,627	1,742	1,967	2,145	2,327

*Actual enrollment is displayed for 1978-1981 and projected enrollment is displayed for 1983-1985.

**Preliminary enrollment is displayed for 1982.

Table 6
Within-State White First-Time Freshman and Transfer Students to Undergraduate Programs at the Traditionally Black State-Supported Institutions of Higher Education

	White Freshman and Transfer Entrants to Undergraduate Study in Fall 1978 and 1981		No. of Additional White Students First-Time Freshman and Transfer Students Needed to Increase the Current White Enrollment at the TBI's as a whole to 15.5% of the Total Freshman and Transfer Enrollment	Provisional Objectives for White First-Time Freshman and Transfer Entrants to Undergraduate Study
	Fall 1978	Fall 1981		
NSU	65	92	44	136
VSU	19	147	26	173
Total	84	239	70	309

Table 7

Within-State White First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall, 1978-1985*) at Virginia's Traditionally Black, Senior State-Supported Institutions of Higher Education

	1978	1979	1980	1981	1982**	1983	1984	1985
Norfolk State University	65	42	61	92	124	128	132	136
Virginia State University	19	92	51	147	87	109	140	173
Total	84	134	112	239	211	237	272	309

*Actual enrollment is displayed for 1978-1981 and projected enrollment is displayed for 1983-1985.

**Preliminary Enrollment is displayed for 1982.

Attachment A

COMMONWEALTH of VIRGINIA
Office of the Governor
Richmond 23219

John T. Casteen, III
Secretary of Education

MEMORANDUM

December 22, 1982

TO: Rectors and Presidents of Virginia's State-Supported Four-Year Colleges and Universities
Chairman, State Board for Community Colleges
Chancellor, Virginia Community College System
Chairman and Director, Council of Higher Education

FROM: John T. Casteen, III

The Governor's Guidance Memorandum for 1984-86 (Virginia: A Future Worthy of Her Past) sets out the administration's general priorities for the upcoming biennium. I write now to begin carrying forward the Governor's priorities by describing how we will set 1984-86 budget targets for our state-supported colleges and universities.

Responding to the Governor's determination that we will give priority to reducing higher education's dependence on enrollment-driven guidelines, we will allocate the funds available for educational and generalizations in the following way:

1. Ninety percent of the funds available will be allocated using the funding guidelines for higher education, commonly known as Appendix M to the Budget Manual;

2. The remaining ten percent of the available funds will be allocated on the basis of reasoned and objective assessments of how adequately and specifically each program proposal addresses the attached list of priorities, which derive from the Governor's Guidance Memorandum and from his public statements about educational priorities in the Commonwealth.

The staff of the Council of Higher Education estimates that the guidelines for 1984-86 are some 60 to 65 percent dependent on enrollment, with the remainder dependent on incremental increases

Memorandum
December 22, 1982
Page Two

based on unit costs, square footage of physical plant, and salary increases. I applaud you for making this so. While one cannot now calculate precisely the effect of the Governor's instruction on this dependency, I judge that the target method described above predicts that targets for 1984-86 are about 50 percent enrollment-driven.

Hoping to minimize confusion and to distribute vital information as widely as possible, I am asking Gordon Davies to schedule a session in conjunction with the Association of Virginia Colleges meeting. This session will include a discussion of targets and the 1984-86 budget generally. In the meantime, I will work with Gordon to plan the targets so that your staffs can begin working on program proposals in good time.

I owe thanks to those of you who contributed to the attached list of specific priorities. I expect to use this list in setting targets.

Enclosure

PRIORITIES FOR SETTING TARGETS, 1984-86
Office of the Secretary of Education

Preface

In preparing presentations for the 1984-86 Executive Budget, Virginia's state-supported colleges and universities will make major contributions toward meeting the Commonwealth's largest goals. These goals include assisting our citizens to develop their capacities to the fullest possible extent, advancing in both private and public areas of employment.

Each goal assumes the Commonwealth's commitment to maintaining and improving the quality of our state-supported colleges and universities, while simultaneously sustaining the high level of access to higher education that Virginia has achieved in the past decade.

Priorities

1. Recognizing that the educational needs of Virginia's citizens in the next decade will become increasingly complex, the Commonwealth will

   improve the quality of her colleges and universities by supporting innovations to promote soundly managed programs that enhance the ability of our state-supported colleges and universities to serve Virginia in teaching, research, and public service for the remaining years of the century, and beyond.

2. Because excellent faculties are essential to excellent colleges and universities, the Commonwealth will

   endeavor to provide average faculty salaries that enable each state-supported college and university to recruit and retain the best qualified available faculty members; and encourage correction of demonstrated salary inequities.

3. Because state-supported higher education has entered a period when non-state funds will be essential to maintaining or achieving quality, the Commonwealth will

   support institutional development activities; and endeavor to fund the Eminent Scholars Program at 100% of the Council of Higher Education's estimate of income likely to be dedicated to the Program from endowments.

4. Because further development of Virginia's industrial potential depends on the availability of a well-educated and highly trained workforce, the Commonwealth will

endeavor to guarantee access to higher education to all who want and can benefit from it.

5. Because the existing commitment to equal educational opportunity for all persons, regardless of race, creed, sex, or physical handicap, is essential to Virginia's future, the Commonwealth will

support colleges and universities in their efforts to expand educational opportunity for the entire population in ways consistent with this commitment.

6. Because simple financial need must not prevent her citizens from pursuing higher education, Virginia will

endeavor to provide adequate funds for student financial assistance.

7. Because sponsored research is equally essential to the continued good health of existing research faculties and to the development of new research capabilities in the state-supported colleges and universities, Virginia will

support proposals aimed specifically at increasing the amount of sponsored research done by Virginia college and university faculties.

8. Because computer and communications technologies can support increased efficiency and effectiveness in certain educational applications, Virginia will

sponsor development of state-wide systems for electronic transmission of higher education courses and programs.

9. Because the rapid pace of change in major centers of population creates special challenges for higher education, Virginia will

endeavor to meet demonstrated needs for new higher education courses and programs that support industrial development or redevelopment, particularly in the established urban and industrial regions.

10. Because the links that connect elementary and secondary education to higher education (vocational or occupational and

academic or professional) matter vitally in defining the characters of education in the state, Virginia will

> promote improvements in teacher education programs; and support programs that bring together college and public school faculties in sundry disciplines in activities that enhance elementary and secondary education.

Attachment B

Guidelines for Institutional Student Recruitment and Retention Plans

The Council of Higher Education staff will work with officials of the Virginia Community College System and the state-supported institutions to prepare student recruitment plans. The plans will be submitted to the Office for Civil Rights thirty days following OCR's acceptance of the amendments. During January, 1983, the Council will host a meeting of admissions personnel, financial aid officers, affirmative action representatives, and institutional counselors to discuss the preparation of the institutional plans. Representatives of the Office for Civil Rights will be included in this meeting.

Each state-supported institution of higher education will develop specific, strengthened measures to recruit and retain black students at the undergraduate, graduate, and first-professional levels. The plans will incorporate the findings and recommendations made in the five studies completed by the Council of Higher Education in 1979 and 1980 under the 1978 *Plan*. The studies are the following:

1. "A Comparison of the Retention and Completion Rates of Black and White Freshmen Who Enrolled at Virginia's State-Supported Institutions of Higher Education in Fall, 1975";

2. "A Study of Baccalaureate Graduates by Race in Virginia and Their Entry Into Graduate and First-Professional Programs";

3. "Virginia's College Bound Black Seniors, 1980";

4. "A Study to Identify Non-Academic Factors Which May Positively Influence the Recruitment and Retention of 'Other Race' Students at Virginia's State-Supported Institutions of Higher Education"; and

5. "A Study of the Continuing Education Needs of Virginia's Citizens: With a Special Emphasis on the Needs of Blacks."

The plan of each institution will include the following elements:

Introduction

Commitment to Programs Contained in the Amendments

Undergraduate Numerical Objectives

Recruitment Goals and Strategies for Entering "Other-Race" Students

Admissions Policies and Practices for Entering "Other-Race" Students

Financial Aid Opportunities Available for Entering "Other-Race" Students

Retention Activities

Support Programs Available to Entering "Other-Race" Students

Graduate Numerical Objectives

Graduate Recruitment Activities

Internal Review and Reporting Systems

The effectiveness of each activity toward meeting the objective will be measured by the institution on an annual basis. As a part of each TWI's recruitment effort, the institution will have a brochure specifically aimed at black students. The brochure will contain a card or a form which may be used to obtain an application for admission as well as detailed admissions and financial aid information. The institution, upon receiving a card or form, will send all of the information indicated above. In addition, the institution will send a follow-up letter to each student who does not return a completed application form. The letter will encourage the individual to complete and return the form.

The Council will review the recruitment plans prior to their submission to OCR. In addition, the Council will monitor their implementation, and assess, on an annual basis, the progress made by each institution toward meeting its commitments. If deemed necessary, the Council staff will suggest changes. A status report on the plan for each institution will be submitted to OCR as part of the Annual Report submitted in August of each year.

COMMONWEALTH of VIRGINIA
Office of the Governor
Richmond 23219

John T. Casteen, III
Secretary of Education

February 8, 1983

Mr. Harry M. Singleton
Assistant Secretary for Civil Rights
Office for Civil Rights
HHS-Mary Switzer Building
330 C Street, S.W.
Washington, D. C. 20202

Dear Mr. Singleton:

I enclose comments on Ms. Fairfax's critique of the 1983 Amendments to the 1978 Virginia Plan.

After analyzing Ms. Fairfax's commentary, I think that she has misunderstood the Amendments and misconstrued their implications for improvement of education in Virginia. In summary, Ms. Fairfax argues that the Amendments commit Virginia to do less than was required under the 1978 Plan. The Amendments actually commit Virginia to do much more. The only provisions eliminated from the 1978 Plan were those found to be counter-productive. In their place, we have committed to measures that reflect the best available educational advice on how to eliminate disparities that concern us as greatly as they do Ms. Fairfax.

Our intention in negotiating the Amendments with the Office for Civil Rights was jointly to identify weaknesses and strengths in the 1978 Plan, to ameliorate the former and enhance the latter, and at the same time to identify educational steps to make schools more productive for all of our students.

Governor Robb and I believe -- along with all Virginia educational leaders who have commented publicly on our commitment to remedy educational problems through educational reforms -- that the Amendments embody an approach that is educationally sound. We believe that Ms. Fairfax and her colleagues may find, on further examination, that the Amendments merit thoughtful support, not summary condemnation.

Sincerely,

John T. Casteen, III

JTC/dtb

Enclosure

cc: Ms. Jean Fairfax
Mr. Dewey E. Dodds

NOTES ON THE MEMORANDUM FROM JEAN FAIRFAX

I. Student Issues

A. Racial Disparities in Student Entry Rates

Ms. Fairfax writes that Virginia responded to Mr. Dodds "neither with an analysis of the institutions' failure to meet goals nor with corrective measures." Preliminarily, recent analysis based on more precise data evinces that the current annual pool of black high school graduates who choose to take the necessary courses to enter college is too small to meet the numerical objectives adopted under the 1978 Plan. We know of no evidence to the contrary. Within the past year, as reported to the Office for Civil Rights, the Council of Higher Education and the State Board of Education have already begun a joint project to influence more black students at the sixth, seventh, and eighth grades to prepare for college. And, in recognition of the data pool, the Amendments provide for a number of measures specifically designed to encourage such black students to select courses that will qualify them for college matriculation on a competitive basis.

Mrs. Fairfax also alleges that the 1983 Amendments commit the Commonwealth to lower goals than would have been required under the 1978 Plan. For documentation, she cites numbers in Virginia's 1982 Annual Report. Her citation is misplaced and her conclusion is mistaken. The numbers cited from the 1982 Annual Report are not the numerical objectives established under the Plan. The good faith commitment under the 1978 Plan, as well as in the 1983 Amendments, is to eliminate, by the final year of the Plan, any difference in the numerical rate at which black and white students graduate from high school and enter college. The last year of the 1978 Plan was scheduled to be 1982-83. The final year of the Plan, as amended, is now 1985-86. The commitment remains the same, without any reduction: to wit, to achieve parity in college going rates between black and white high school students. The final number of students who must be enrolled to achieve parity may be higher or lower than the calculation for 1981-82 cited in the Annual Report.

Furthermore, the number cited in the 1982 Annual Report, and referenced by Ms. Fairfax in her Memorandum, as the goal for the traditionally white institutions would be valid only if 1981 were the base year used in the 1978 Plan. In fact, 1981 was not the base year for the 1978 Plan. Rather, 1976 was the base year and was used in the Plan for setting numerical objectives for the enrollment of additional black students at the traditionally white institutions.

The Office for Civil Rights criteria provide that, to meet their numerical objectives, the traditionally white institutions, taken as a group, must either eliminate one-half of the disparity identified in the base year, or enroll 150 percent more black students. The 1983 Amendments, which use 1978 as the base year (the base year was approved by OCR) proposed the enrollment of 2,730 black first-time students by 1985-86.

In summary, the numbers used by Ms. Fairfax were never recognized, neither by the Office for Civil Rights nor the Commonwealth, as the goals under the 1978 Plan. The 1983 Amendments call for the enrollment in three years of 1,263 more black first-time students than are currently enrolled at the traditionally white institutions. The Legal Defense Fund complaint that this goal is too low totally ignores the realities of the number of black students who both intend, and are prepared in the high schools, to undertake post-secondary work. It would appear that the Legal Defense Fund would commit a state to perpetual failure by requiring adoption of unrealistic numbers as goals, rather than setting genuine challenges to the states.

Finally, Ms. Fairfax complains about the enrollment objectives set for Virginia's two-year institutions. While the 1978 Plan set no enrollment goals for these institutions, the Commonwealth voluntarily agreed, in the 1983 Amendments, to establish such goals. Again, the numbers used by Ms. Fairfax in her Memorandum do not reflect commitments made in the 1978 Plan. She also complains about the lack of overall annual undergraduate goals, a matter not even addressed in the Office for Civil Rights criteria, and about the procedure to be used in counting students. The concern over the procedure is totally unfounded; in no way would students be included to cause "manipulation or inflation" of the statistics. Rather, the revised procedure allows a more complete and accurate counting of students actually entering the system. Not to count students who accelerate their first-time entry by enrolling in summer school, for example, would directly encourage institutions (merely for the sake of being able to count the students for reporting purposes in the fall) *not to begin early* efforts to ensure that "high-risk" students accepted for admission be given every possible assistance in the hope of retaining the students in college.

Contrary to Ms. Fairfax's assertion that "there is no scheduled date for the launching of the Virginia Transfer Student Grant Program, the largest proposed program," the Amendments clearly state that "the cost of this program is $500,000 the first year, $1,100,000 the second year, and $1,300,000 the third year." Since the amendments propose a three-year Plan, it is evident that funds will be requested to begin the program in 1983-84. While it is true, as Ms. Fairfax writes, that "Virginia officials have not indicated alternative sources of funds if the legislature fails to provide the requested appropriations" for this program, it hardly seems fair to denounce Virginia officials on the basis of pure conjecture over what a legislative body may do at a future date. In the first place, there is absolutely no evidence to indicate that the legislative body will not fund the commitments. In the second place, mere failure to fund a given commitment does not, per se, evidence a discriminatory purpose in violation of Title VI. It is still unlawful in Virginia, as it is in most states, to spend funds which have not been appropriated by the legislature. Moreover, Virginia's constitution prohibits deficit spending. There is every indication, however, that Virginia's General Assembly will, even in the face of severe economic constraints, provide the necessary appropriations to implement the programs and activities contained in the Amendments.

B. Graduate and Professional Enrollment

Ms. Fairfax complains about the lack of progress in developing numerical objectives for graduate and professional disciplines. To the contrary, the Amendments clearly indicate that the institutions' student recruitment plans will contain specific measures for the recruitment of black students into graduate programs. Moreover, the Commonwealth will submit goals and timetables, by graduate discipline, within the thirty days as provided in the Amendments.

II. Desegregating Employment

Ms. Fairfax's account of the exchange of letters that occurred in November and December, 1981, is generally correct. *Because the Office for Civil rights* agreed to the development of employment objectives based upon labor market availability data for each academic department within an institution, there was no way that an aggregation of the numbers would produce a meaningful statewide goal. When the calculations were completed on a department-by-department basis, a few small institutions found that, in the aggregate, they had no hiring objectives. When this fact was ascertained, Dr. Gilley, Virginia's previous Secretary of education, aptly decided that no institution should have an objective of zero and, contrary to Ms. Fairfax's implication, adjusted the institutional objectives so that each institution would have an employment goal.

The institutions' revised faculty recruitment plans will contain revised hiring goals for black faculty. Because academic institutions do not ordinarily classify positions as "doctoral" and "nondoctoral," it would be illogical and meaningless to try to set statewide goals for each of these two categories, as suggested by Ms. Fairfax.

III. Disestablishment of the Dual System: Enhancement of the Traditionally Black Institutions

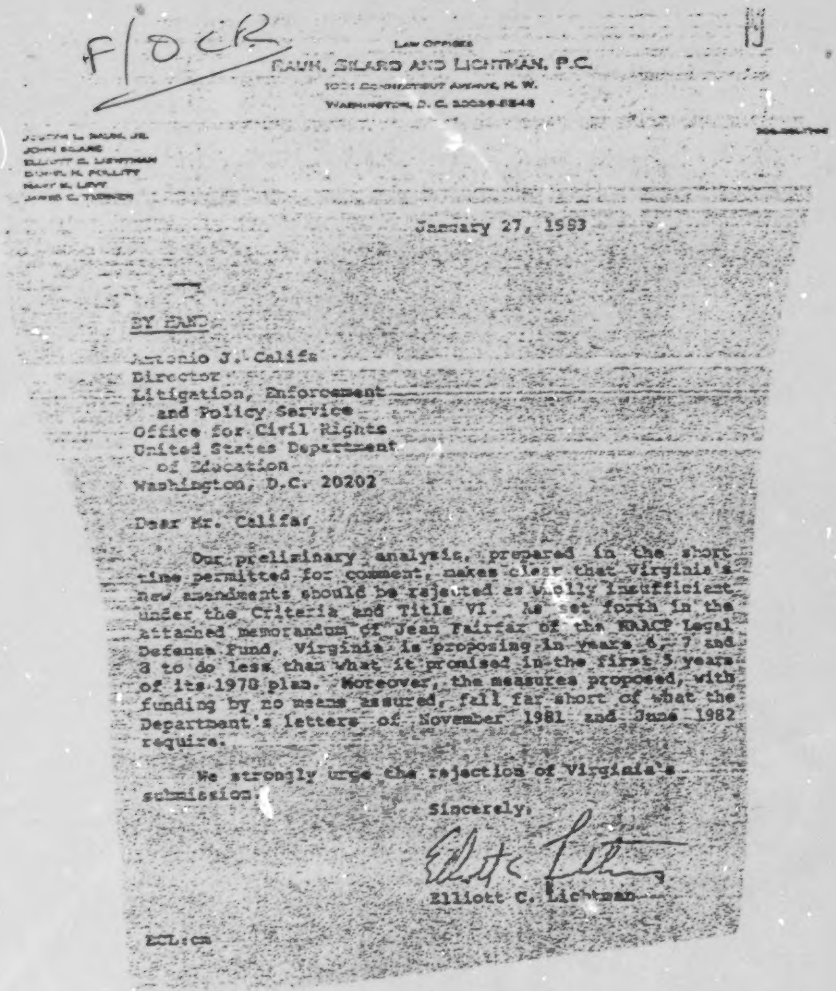
Contrary to the implications in Ms. Fairfax's Memorandum, the enhanced programs at the traditionally black institutions are not competing for funds. The enhancement funds are separately identified in the budget for each traditionally black institution; and, these funds have been expressly exempted from the budget reversion required for all other institutions and agencies. The Amendments further provide that the traditionally black institutions will revise their current curriculum development plans so that the funds provided specifically for enhancement will be applied only toward the programs to be enhanced. Moreover, the Council of Higher Education is charged with working with the institutions to identify low-demand, low-productivity programs whose resources hopefully may be re-allocated to the programs identified for enhancement. Additionally, the Governor has exempted from the freeze on capital outlay certain of the facilities at the traditionally black institutions which will house the programs to be enhanced. He has also made a commitment to give priority to lifting the freeze, as soon as the economy permits, on additional construction projects related to program enhancement at the traditionally black institutions.

Ms. Fairfax expresses her underlying concern that the resources provided to the traditionally black institutions are not comparable to those at the traditionally white institutions with similar missions. Yet, the resource comparability data (which have been annually transmitted to OCR) reveal no overall deficiencies for the traditionally black institutions. There are individual programmatic or activity deficiencies (such as the funds spent for library books and periodicals), but these deficiencies reflect institutional spending decisions and not inequities in appropriations.

It simply is not accurate to allege that Virginia has abdicated its responsibility to provide funds to enable Virginia State University to get its business program accredited. The Commonwealth, in fact, identifies this objective in the Amendments as one of the major goals for the use of enhancement funds at Virginia State University. The Commonwealth is providing, and will continue to provide, substantial funds for this program.

The Legal Defense Fund continues to believe that the construction of a Continuing Education Center is important to Virginia State University's progress. However, Virginia State University decided long ago that the Center was not a high priority item. Not only was the project financially unfeasible, but the expense to maintain the Center would drain away funds which are truly needed to improve the institution academically and administratively.

Finally, the decision as to whether Virginia State University offers a four-year Engineering Technology Program rests with the institution. The program was approved by the Council of Higher Education as both a two-year and four-year program. the institution has so far chosen to emphasize the two-year component on the basis that it has the most potential for attracting white students. The facilities for the program will be contained in Hunter-McDaniel Hall, which has been removed from the capital outlay freeze.



F/OCR

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January 27, 1983

BY HAND

Antonio J. Califa
Director
Litigation, Enforcement
and Policy Service
Office for Civil Rights
United States Department
of Education
Washington, D.C. 20202

Dear Mr. Califa:

Our preliminary analysis, prepared in the short time permitted for comment, makes clear that Virginia's new amendments should be rejected as wholly insufficient under the Criteria and Title VI. As set forth in the attached memorandum of Jean Fairfax of the NAACP Legal Defense Fund, Virginia is proposing in years 6, 7 and 8 to do less than what it promised in the first 5 years of its 1978 plan. Moreover, the measures proposed, with funding by no means assured, fall far short of what the Department's letters of November 1981 and June 1982 require.

We strongly urge the rejection of Virginia's submission.

Sincerely,

Elliott C. Lichtman

ECL:ca

MEMORANDUM

TO: *Adams* v. *Bell* Files: VIRGINIA

FROM: Jean Fairfax

RE: Comments on 1983 Amendments Virginia Plan For Equal Opportunity In State-Supported Institutions Of Higher Education

The Department of Education (ED) should reject the 1983 Amendments that Virginia has proposed to its Plan because this submission, dated January 21, 1983, fails to respond to specific requirements for measures and corrective action that the Office of Civil Rights (OCR) had made in its evaluation letters of 17 November 1981 and 3 June 1982.

I. STUDENT ISSUES

A. Racial disparities in student entry rates:

1. Noting the increasing disparities in college-going rates and the failure of two-year and four-year institutions to meet their institutional goals, Dewey E. Dodds, Director, OCR Region III, wrote to Virginia in November 1981:

> For institutions not meeting their objectives to increase black undergraduate admissions, the Commonwealth is requested to (a) determine why the steps taken to date have not brought about the intended results and (b) describe alternative or additional steps the Commonwealth and the institutions will take to meet the black student entrance objectives in the *Plan* (Letter to Dr. J. Wade Gilley November 17, 1981 p. 2).

In June 1982, OCR/Dodds informed Virginia that:

> the Commonwealth's response did not address the decline in first-time black enrollment at the

> community colleges and did not . . . set forth specific measures to increase black enrollment at the traditionally white institutions at the undergraduate, graduate or professional levels or to improve the retention rates of black students (Letter to Dr. John T. Casteen, III 3 June 1982 pp. 1-2).

2. Virginia responded neither with an analysis of the institutions' failure to meet goals nor with corrective measures. Instead, the 1983 Amendments:

a. Commit the Commonwealth to lower goals:

- Virginia proposes to enroll 1,185 addditional black within-state, first-time freshmen beyond the 1978 enrollment to its state-supported postsecondary institutions as a whole by 1985-86 (see Table 1). The total number of first-time black students by 1985--5,477--would be fewer than the enrollment that would have been required under the existing Plan--5,754--for Fall 1981, according to Virginia's 1982 Annual Report, which also documented that:

  > Virginia needed to enroll an additional 1,370 black first-time freshmen at its state-supported institutions, taken as a whole, in order to have had parity in black and white first-time freshman enrollment in 1981 (1982 Annual Report, page 26 and 27).

- Virginia proposes to enroll 1,638 additional black within-state, first-time freshmen and transfer students, beyond the 1978 enrollment, to its traditionally white 4-year institutions (TWI) by 1985-86 (see p. 10, Table 4). The total first-time black enrollment in 1985--2,730 students--would be lower than the number of first-time black students--3,620--that would have been required for Fall 1981 under the existing Plan, according to Virginia's 1982 Annual Report.

> Thus, there was a 2,953 (20.5 percent) disparity between the enrollment of black first-time and white first-time high school and two-year college graduates at the four-year, traditionally white institutions. The disparity translated into a need to have enrolled 4,401 black first-time students at the four-year traditionally white institutions in order to have achieved parity in 1981. Virginia's objective, however, could have been fully met if these institutions, taken as a group, had been able to enroll 2,172 additional black first-time freshman and first-time transfer students. This would have required a total of 3,620 black students and would have represented an increase of 2,172 students over the 1,448 black first-time enrollees in 1981 (1982 Annual Report, pp. 38-39).

* Virginia proposes to enroll an additional 557 black first-time students in the two-year colleges over the 1978 enrollment, for a total enrollment of 2,327 first time black freshmen by 1985 (see page 9 and Table 5). According to the 1982 Annual Report (page 26), Virginia would have needed a total of 2,516 black freshmen for parity in 1981, or an additional 923.

* The Amendments include no goals for black first-time freshmen (separate from transfers) and no overall annual undergraduate goals for black students at the TWI.

b. More time for less:

The Amendments propose not only lower goals, but an extended period of time to achieve them. There is even uncertainty whether these lower goals will be met by 1985:

> For the TWI's, taken as a group, the Commonwealth *may*, by the last year of the Plan, eliminate one-half of the difference in the attendance rate between black and white students in 1978 (10.7 percent). (page 11) (emphasis added)

Virginia purports to apply the 150 percent cap to its TWI projections for 1985-86. Yet the Criteria make clear that this cap was a temporary one, applicable only to the first five years ending in 1982-83. ED should not acquiesce in this misinterpretation of the Criteria.

c. Virginia proposes to alter drastically how students are counted. Institutions may count freshmen regardless of when they graduated from high school, and first-time transfers regardless of when they last attended the two-year college. Instead of reporting the census as fall enrollment, Virginia proposes to count students who enroll at any time of the year, including summer. This procedure would render meaningless OCR's on-going efforts to assess developments longitudinally since 1975 and to undertake comparative analyses with other *Adams* states that follow OCR's reporting procedures that have been utilized since 1975. These procedures lend themselves to the manipulation and inflation of statistics and also to within-state inconsistencies, inasmuch as institutions "may" utilize them.

d. Measures:

Instead of providing the measures that OCR has repeatedly requested, Virginia has submitted a "plan to plan." Following approval of the Amendments, institutions are in the future to submit recruitment and retention plans designed pursuant to very general guidelines. Moreover, Virginia has refused OCR's request to assess why earlier approaches by institutions and the Commonwealth have not worked. The Amendments propose several new programs, some of which will only begin in 1983 if funds are forthcoming. There is no scheduled date for the launching of the Virginia Transfer Student Grant Program, the largest proposed program. Most of the funds for student programs would not even be requested before the 1984-86 biennium, and the Virginia officials have not indicated alternative sources of funds if the legislature fails to provide the requested appropriations.

B. Graduate and Professional Enrollment

In November 1981 OCR reminded Virginia that disparities in the entering rates into post-baccalaureate programs of black and white students had been identified by major fields of study but that "only three of the 10 institutions which offer graduate programs reported taking measures to recruit blacks at the graduate level. No institution reported measures to increase black access to professional programs." Virginia was required to indicate for each institution and by major field of study, the measures that would be adopted to eliminate the disparities that had been identified (Dodds to Gilley, pp. 2-3). Virginia has not submitted these measures. The Amendments promise to complete the retention study by July 1, 1983 and to submit goals and timetables within 30 days.

Programs that are described depend on funds yet to be requested by the Governor, and some not until the 1984-86 biennium. No commitments are made concerning alternative funding if the legislature does not make the requested appropriations.

II. DESEGREGATING EMPLOYMENT

A. In November 1981, Dewey Dodds quoting from the Plan reminded Dr. Gilley that:

> The Commonwealth, however, has not aggregated the institutional information in its statewide progress reports to determine if the system as a whole is progressing toward its objective to "achieve a proportion of black faculty and administrators at least equal to the percentage of black graduates receiving masters and doctoral degrees, in appropriate fields from Virginia's state-supported institutions.

Dodds requested an analysis of progress towards achieving the statewide goal for faculty and administrators and also asked for five-year goals from those institutions that had not submitted them (Dodds letter to Gilley, p. 3).

B. In a letter to Dewey Dodds, dated December 21, 1981, Dr. Gilley advised OCR that an "aggregation of these goals to assess statewide progress was not deemed appropriate. . . ." He also provided Virginia's justification for zero goals by Virginia Military Institute and Richard Bland College.

C. The Amendments contain no statewide goals for doctoral and nondoctoral positions. Several new initiatives are proposed in the Amendments but all of them (except the Non-retention Study for $2,500) are dependent on funds that are not assured;

some legislative appropriations will not be requested until the 1984-86 biennium.

D. The Amendments do not address as an urgent priority item the deplorable current situation, as documented in the Fall 1981 data provided by Virginia (see attachment).

III. DISESTABLISHMENT OF THE DUAL SYSTEM: ENHANCEMENT OF THE TRADITIONALLY BLACK INSTITUTIONS (TBI)

A. Dodds' letter to Dr. Gilley of November 17, 1981 had called for detailed information concerning resource comparability, resources for new programs, and facilities enhancement for both Virginia State University (VSU) and Norfolk State University (NSU) and had specifically mentioned the four-year Engineering Technology program and the Continuing Education Center at VSU and the accreditation of NSU's business program. Dodds' letter of June 3, 1982, expressed OCR's concern with the:

> absence of comprehensive enhancement measures. . . . Most critically, the Commonwealth's December response did not provide complete enhancement measures for the traditionally black institutions, including a list of all necessary facilities improvements and of all resources needed for the development of new programs so they will be comparable in quality and scope to similar degree programs offered at other Virginia institutions (pp. 1-2).

B. The Amendments fail in at least the following respects:

1. While the Governor excluded enhancement items from the 5 percent reduction that he ordered last fall, other items in the TBI budgets were not protected from the cuts. This has meant that enhancement and non-enhancement items must

both be covered in a substantially reduced budget. The 5 percent cut at NSU meant a loss of $750,000. It is very difficult for NSU to continue to fund the items in its enhancement budget ($615,000) when the total program at the institution is threatened. An additional cut of 6 percent for the coming year is now being discussed. Other states in the process of dismantling their dual systems have totally exempted the TBI from statewide cuts, or are funding enhancement "off the top" so that enhancement and non-enhancement programs are not competing for limited funds at the TBI.

2. The Governor's freezing of construction funds that had already been appropriated has severely hampered the facilities enhancement that is urgently needed prior to launching new programs. Virginia officials should have exempted the TBI from the freeze as a demonstration of their good faith to meet their commitments under their Plan.
3. The 1982 Annual Report presented data on resource comparability, but the Amendments do not provide a schedule with time frames and estimated costs for addressing the deficiencies. There is only a vague commitment that the TBI "by 1985-86 will have facilities for all their programs that at least meet state planning space guidelines and are at least adequate for the needs of the programs" (p. 30). This statement is clearly unresponsive to the requirements that OCR has articulated over the years.

4. The Amendments mention "additional enhancement funds for baccalaureate programs" that the Governor will request beginning in 1984-85, but it is not clear whether these are the priorities of the TBI. Computer science programs, that are high on NSU's agenda are not mentioned. In response to OCR's query about the Commonwealth's efforts to get accreditation of NSU's business program, Virginia has simply abdicated its responsibility in this regard. Instead, Virginia has now simply shifted the accreditation burden to NSU with the suggestion that it seek the necessary funds from the federal Title III Program.
5. Secretary Casteen's readiness to consider in the future some state funding of outreach programs is a completely inadequate substitute for the Continuing Education Center for VSU which OCR has previously identified as an important enhancement of VSU's status as a regional university. No mention is made of such a Center in the Amendments.
6. The Amendments are also silent on VSU's four-year, on campus Engineering Technology program and the facilities for it.
7. Programs that would be jointly sponsored by VSU and Virginia Polytechnic Institute have been discussed by Virginia and OCR for years; the Amendments only "commit" to a draft plan by July.
8. Other items, such as the proposal to upgrade the admissions offices of the TBI, depend upon funding which is not in hand.
9. If the requested appropriations from the legislature are not forthcoming, there is no indication of steps which Virginia officials will take to launch programs in [illegible] and to insure their continuation in the next biennium.

BLACK PROFESSIONAL EMPLOYMENT IN VIRGINIA'S TRADITIONALLY WHITE INSTITUTIONS Fall 1981

	EAM	FACULTY	PROFESSIONAL NONFACULTY
Christopher Newport College	3/31 (9.68%)	0/114 0/60 Tenured	1/12 (8.33%)
Clinch Valley College	0/15	0/45 0/30 Tenured	1/8 (12.5%)
College of William & Mary	1/91 (1.1 %)	2/374 (.53%) 0/268 (Tenured)	1/21 (4.76%)
George Mason University	8/90 (8.89%)	15/465 (3.23%) 6/211 Tenured	4/52 (7.69%)
James Madison University	5/97 (5.15%)	2/443 (.45%) 0/241 Tenured	0/62
Longwood College	1/32 (3.13%)	4/164 (2.44%) 0/104 Tenured	4/32 (12.5%)
Mary Washington College	1/27 (3.70%)	1/135 (.74%) 0/86 Tenured	0/29
Old Dominion University	16/157 (10.19%)	12/592 (2.03%) 2/326 Tenured	7/77 (9.09%)
Radford University	0/49	2/299 (.67%) 0/168 Tenured	1/36 (2.78%)
Virginia Commonwealth University	23/253 (9.09%)	46/1382 (3.32%) 10/673 Tenured)	219/1707 (12.83%)
Virginia Military Institute	0/22	0/98 0/64 Tenured	0/16
Virginia Polytechnic University	5/223 (2.24%)	27/1694 (1.59%) 11/966 Tenured	79/948 (8.33%)
University of Virginia	22/463 (4.75%)	21/1436 (1.46%) 8/752 Tenured	63/1766 (3.57
TOTAL	85/1550 (5.48%)	132/7241 (1.82%) Tenured: 37/3959 (.93%)	380/4766 (7.97%)

NEW HIRES July – September 1981: Tenured FAculty 4/69 (5.58%)
Nontenured-on Track 13/346 (3.76%)

Prepared by Jean Fairfax
November 1982

Mr. SIMON. Our final witness is Dr. Raymond Burse, president, Kentucky State University, Frankfort, Ky.

STATEMENT OF RAYMOND BURSE, PRESIDENT, KENTUCKY STATE UNIVERSITY

Mr. BURSE. Thank you, Chairman Simon, members of the House Judiciary Subcommittee on Civil and Constitutional Rights and the Education and Labor Subcommittee on Postsecondary Education.

It is, indeed, my pleasure to be here this morning to give testimony regarding the status of higher education desegregation activities and efforts to enhance Kentucky's historically black universities.

Kentucky is like a great many of the *Adams* States with only one historically black institution, and yet is unlike a great many of the *Adams* States in that Kentucky has a black population which is less than 8 percent of its total population.

As I stated earlier, Kentucky has only one historically black institution, and that institution is Kentucky State University, the institution that I am proud to head.

Kentucky State University was founded in 1886 as the Kentucky institution of higher learning for blacks. The institution has gone through several name changes from the State Normal School for Colored Persons, Kentucky Normal and Industrial Institute for Colored Persons, Kentucky Industrial College for Colored Persons, Kentucky State College for Negroes, Kentucky State College and, finally, Kentucky State University.

Kentucky State remained Kentucky's institution of higher learning for blacks until 1950 when an effort was made to desegregate the State's other public institutions of higher learning.

Needless to say, what was enacted on the books was not implemented in reality. Kentucky State continued to serve the majority of the black population in the State.

In January 1981, the U.S. Department of Education cited the Commonwealth of Kentucky for its failure to desegregate its institutions of higher learning in that the commonwealth had failed to enhance Kentucky State University, its historically black institution; had not desegregated the faculty, staff and administrations of its traditionally white institutions, and had failed to truly integrate or desegregate the student bodies in its traditionally white institutions.

Once the U.S. Department of Education's letter was issued to Kentucky. many in Kentucky blamed Kentucky State University for the failure of the State to desegregate its institutions.

This happened even though Kentucky State had a student body of which approximately 50 percent of its total head count enrollment was white and approximately 30 percent of its full-time enrollment was white.

This was done at the time when the premier institutions of higher learning in the State had a black enrollment which was less than 2 percent of their total head count.

There is no doubt that the 2-year debate on whether to continue Kentucky State University as a freestanding 4-year institution or downgrading it to a community college or merging into one of the State's traditionally white institutions has hampered the development of the institution as a full partner in the Kentucky public higher education system.

However, on the other hand, there have been some very positive elements to come out of those desegregation efforts.

But before I mention those, I would like to talk about some of the negatives.

The U.S. Department of Education has required, or has been seeking to require, Kentucky State University to have 30 percent of the student body enrolled in what is known as high demand and nonduplicative programs. Nonduplicative in that they do not duplicate programs of the traditionally white institutions.

My question to the Department has been, what is a high demand and nonduplicative program? If in 3 years from now that program is no longer high demand and nonduplicative, what happens to Kentucky State University?

Are we then continuing a program which is a white elephant or something that is educationally sound to be built into that institution?

For Kentucky State to comply with that mandate and if there later occurs a sudden change in the market demand it would leave us with that white elephant to care for for years to come.

Rather than looking at what is educationally sound for the university, the approach has been to take or to seek what is most convenient and can most easily be obtained. This approach must be rethought.

The U.S. Department of Education has required that the commonwealth develop a comprehensive desegregation plan, which requires Kentucky State to do several things relating to programs funded by other Federal agencies.

While the U.S. Departmnet of Education, for instance, required that we revamp, restructure, and strengthen our land-grant programs, the U.S. Department of Agriculture, on the other hand, has tried and continues to try to remove the funding for various aspects of those programs and to cripple those programs in their development.

There is no way that an institution can serve two inconsistent mandates by two Federal agencies.

There is no coordination between Federal agencies. The inconsistency may also run to differences between divisions within the U.S. Department of Education itself.

On the one hand, the Civil Rights Division of the U.S. Department of Education has required that certain actions be taken, for instance, in the enhancement of the university, while on the other hand, the facilities management section, the title III program and Federal student financial aid all appear to counter what civil rights is requiring.

It leaves an institution grappling for its total existence, while at the same time trying to meet the differing demands of various agencies.

It becomes even more acute when one is operating under a desegregation plan with certain time deadlines in which one must take certain actions or take certain corrective measures.

Other divisions within the Department do not always react to those timeframes and time deadlines. An example of this is that the Civil Rights Division issued its letter to Kentucky in January 1981, and was quite aware of the turmoil that developed in the Commonwealth of Kentucky.

This turmoil has had an effect on the student enrollment at Kentucky State University. The university last fall found itself in a position of being unable, because of declining student enrollment, to meet its maintenance of effort requirement.

A request regarding the waiver of this maintenance-of-effort requirement was submitted last December, and as of today, the university is still awaiting the outcome of this request.

The outcome of this request will determine whether or not the university has additional funds to meet the needs of the State's desegregation plan.

This is important because the university will not receive any additional new funding to meet the plan requirements. Failure to meet the plan's requirements means the university and the Commonwealth of Kentucky will be back where they were in January 1981.

To mention some of the positive aspects—and I think there have been several:

Kentucky State has gone from a predominantly black or almost black institution to one in which today 60 percent of its total head count enrollment is now white; 37 percent of its full-time equivalent enrollment is white; a faculty which is approximately 65 percent white; and an administrative staff which is approximately 30 percent white.

Those numbers are cited not for the mere recitation of numbers, but to show that Kentucky State University is becoming a fine, small, liberal studies-oriented institution for all students of all races who are truly serious about being better educated.

From where the institution was to where it is now, it can probably not be matched by any other public or private institution in the Commonwealth of Kentucky. Kentucky State University has been successful in desegregating its student body, faculty, and staff.

A second positive element is that the desegregation plan or effort has allowed the university to take a critical review of itself and to redefine its mission along lines that are dissimilar to the other public institutions in the State.

For many years, Kentucky State University tried to imitate and duplicate what was taking place at the traditionally white institutions in the State. The desegregation plan allowed us to redefine our mission around becoming a public liberal studies institution with the lowest student-faculty ratio in the Commonwealth.

The liberal arts mission and the lowest student-faculty ratio are a direct outgrowth of the desegregation effort. This represents significant triumphs for Kentucky State University, triumphs in terms of Kentucky State being the Commonwealth's small public institution and triumph in that the university is now able to justify its large expenditure per student.

As I cite later on, Kentucky State, though we only attract 10 percent of the total number of blacks enrolled in higher education each year, we continue to graduate approximately 25 percent of all black graduates in Kentucky who receive baccalaureate degrees. That is quite an accomplishment.

The plan has also allowed for new efforts and thought about what Kentucky State University should be and is about. It has allowed us not only to redefine our mission, but to look hard at the retraining and needs of our faculty, and to provide for the sabbatical leaves, the study leaves, to enhance the skills and qualities of our faculty.

It has also allowed us the opportunity to be able to do things in terms of the students who come to Kentucky State. We presently have agreements with our sister institutions that 3 percent of the entering class of the medical, dental, and law schools of Kentucky will be Kentucky State graduates.

This is a significant accomplishment, but an accomplishment that grew out of a continuing effort of calling to the attention of Kentucky that it had not taken all the action required of it under title VI.

The last thing that is done, which I consider to be most noteworthy, Kentucky State is located in Frankfort, the seat of the State government in Kentucky, and for several years, State government had not noticed that Kentucky State was even in Frankfort.

The desegregation effort has allowed or forced the State government to recognize the presence of Kentucky State, to begin to work on cooperative programs, and these programs have taken several forms.

We have an intern program where students who enroll in our public affairs and other programs are employed by State government. We have a cooperative education program with the State government.

In addition, the training arm for State government, the Governmental Services Center, was moved to my campus last September, and the impact that move has had on the students at Kentucky State, as well as State employees, is a significant accomplishment.

So I think, in summary, I can say that the efforts involved in desegregating, or at least, attempting to desegregate the institutions of higher learning in Kentucky have met with some successes.

But they met with successes because there has been, as President Stone said, a constant Federal vigilance, constantly reminding the individuals that there are laws on the books in which they have to meet.

Like the rest of my colleagues, I would be glad to answer any questions that you may have.

Mr. SIMON. Thank you very much.

The Chair is going to use the 5-minute rule, and I will impose it on myself, also, so that we can move it around and get to as many members as possible, and I will also alternate between the two subcommittees in calling on members for questions.

In my second 5-minute period, I am going to get into more specifics about what you have testified on, but first I have a very general question I would ask of all three witnesses.

Are you satisfied with the direction and support that you are now receiving from the Department of Education and the Department of Justice in your efforts?

Mr. CASTEEN. Mr. Simon, we are involved in my State with the Department of Justice.

With the Department of Education, the relationship is sometimes adversarial, as it must be, because they are carrying out orders of the court.

I would say that especially since about December the relationship has improved substantially, and I think at this point that our chief problem is that we cannot control the bickering that goes on in court, and obviously has some impact on what OCR on behalf of the Department of Education can do in Virginia.

The fact is that they have addressed the educational concerns that we raised back in February squarely and systematically.

It is also a fact that in a State whose educational government system is very peculiar and is unlike those in most other States, OCR has over the years since 1978 learned a great deal about how we work.

We have no central governing board, we have no central chancellory, we have no single seat of authority in higher education. Probably 30 different boards have some impact on education in Virginia, and it has become a game of musical chairs in recent months in our efforts to see to it that the educational enterprise that we have set into motion runs properly.

Mr. **Simon**. Yes.

Mr. **Stone**. Mr. Chairman, the Federal Government is never a good ally. It is the best ally that we have. When we sat at the bargaining table with the Justice Department, we were bargaining as much against the Justice Department as we were against the State of Louisiana because we thought we saw our interest more clearly than either the Justice Department or the State of Louisiana.

More frequently, though, we found that our position more closely paralleled that of the Justice Department than the State of Louisiana. Without the Justice Department, we would not have been able to reach a compromise, which is a compromise that everyone says is a good settlement of a law suit, but no one is fully satisfied with it.

As to the implementation of the consent decree, the Justice Department has just sat on the sidelines since the signing of the decree. Although our lawyers have been in contact with them from time to time, they have left it to the monitoring committee in Louisiana.

I am not suggesting that action in reference to implementation should not be initially left to the monitoring committee, but I do believe that the Justice Department does have the responsibility to say at an appropriate time that something is not in keeping with the consent decree as it views it.

It has not done that yet in Louisiana, to my knowledge.

Mr. **Simon**. If I can follow through more specifically, you feel that the Ph.D. program, as you testified, is not complying with that consent decree. Do you feel the Justice Department ought to be coming in and——

Mr. **Stone**. I think it should have said that we understand the clear language of this consent decree to award such a program to Southern University.

Now, I don't doubt one bit that if we raise that question with the Federal courts, the Justice Department will be standing with us. I don't doubt that, but after all, the Justice Department is as much a part of this litigation as Southern University's board of supervisors is.

As a matter of fact, the Justice Department might even be considered to be more of a party, because it sought in the suit to eliminate what it called the vestiges of duality in higher education in accordance with title VI and the Constitution of the United States.

Mr. SIMON. You kept the Justice Department informed about the situation?

Mr. STONE. Oh, yes, yes. We think that we have a rather unique situation in Louisiana in that our board was a party to the suit and our board was predominantly black, which meant that we hired our own attorney, even though the State of Louisiana was represented by the Attorney General.

Of course, after we did that, then other agencies hired their own attorneys. We didn't think we had to go along with either the State or the Justice Department, but we thought it was that we had an obligation to see that the law was carried out.

I think that that is a little bit different from what happens in most States in situations like this.

Mr. SIMON. Dr. Burse.

Mr. BURSE. Mr. Chairman, I think I can say I am not completely satisfied with what we have gotten from the Department of Education. At the same time, I am not completely dissatisfied.

My concern with the Department has been basically the time frames or time lines in which it has required the State to take certain action. I think in great many instances, those time frames do not serve the best interests of an educational institution.

It is sort of hard to develop and start a new program in 60 days. I think the Department has to understand this. In Kentucky, we took a rather unique approach.

I think in most other States they had moved programs from one institution to another to implement a new program. Kentucky took somewhat of a novel approach in that rather than adding a new program, they redefined the institution around the liberal arts mission with the lowest student-faculty ratio in the State.

The Department of Education has a tough time grappling with what that meant, even though I think they were at times being told by individuals and institutions specifically what it meant.

I think that the Department has to have more sensitivity to what is taking place in the individual States and the developments there, and don't try to take the blueprint from one State and transfer it from State to State to State, because I think it ends up being a disservice to the institutions, in Kentucky it has been particularly difficult.

Beyond the problem with the definition of the institution, in the high demand and nonduplicative issue, for the most part, the Department has been very supportive.

They have requested that the State do some things that I had been long in favor of, and in negotiating sessions that I have been privy to. They have not reneged on the commitments that they have made.

Mr. SIMON. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I welcome the witnesses. There has been an accusation raised in many quarters about the war on civil rights as it is going on in the Justice Department, particularly the Civil Rights Division and various departments of the Department of Education.

Much of it turns on desegregation orders: voluntary resolutions of discrimination suits between municipal governments and their employees, what has been perceived by many equal opportunity agencies as deliberate understaffing and confusing directives that go to employers in the public and private sectors, threats on the part of the Attorney General for Civil Rights to specifically overturn established law as in the *Weber* case with reference to goals and time tables.

Are there similar problems that exist in the field of higher education?

Mr. STONE. I don't think we have had them in exactly the manner in which you have described them. I do not believe that I have seen in higher education—and this is what I was trying to say a few minutes ago—the same diligence in trying to achieve what I have thought of as justice guarantees by the Constitution of the United States as in some other periods.

Whether this is due to a better understanding of the problems or a change in the definition of justice, I don't know. But I think I have seen less diligence, if I may put it that way.

Mr. CONYERS. Well, how serious is "less diligence"? Well, institutional disagreements are something with which all of us have to abide.

The question that brings two committees here is whether there is a serious turning away from the commitment under the civil rights laws passed over these last two decades as it applies to a higher education opportunity for blacks.

Mr. STONE. Well, I am speaking mainly of the Justice Department's involvement in higher education, and specifically about what I have seen happen in Louisiana. Beyond the knowledge of what I have read in the newspapers, I don't know personally too much about the attitude of the Justice Department has been at other levels, and what the Department of Education's view has been at the elementary and secondary levels.

Of course, since we are under the desegregation order that was brought on as a result of the Justice Department's intervention in that matter, or rather, its filing that suit, I think that we have a different situation.

My impression is based on some of the utterances that I have heard and some of what I have read in the newspaper that there is a backing away from the whole civil rights movement in this country, but I can't swear to that.

Mr. CONYERS. Dr. Stone, what we are leaving the impression of is that blacks in your State are receiving better and more adequate, a higher level education; that their funding and the processes and techniques are suitable to you; and that outside of a few disagreements with the Justice Department, which I think can be fairly characterized as minor, the educational opportunity for blacks at the higher level in your State sound rather fair to me.

Mr. STONE. I am not saying at all that what has taken place in Louisiana is either adequate or fair.

Mr. **Conyers**. Well, are more blacks getting educational opportunities? My impression, although I am not on the chairman's committee, but from the universities that I have been to, that there are huge turnbacks in educational opportunities based on funding, policies, enforcement procedures that largely stem from controversial reversals of a traditional position in the Department of Education——

Mr. **Stone**. That is correct. We have found on the question of financial aid that a larger number of our students find themselves not able to raise the student's share.

Southern University is a low tuition institution. We have, by design, kept our tuition low. As low as it is, we find that many, many students cannot contribute reasonably to their education.

We have felt, you see, that the high tuition and the cutbacks on Federal aid would force many of the black students out of many of the white institutions with high tuition and they would be coming back to Southern University.

We think that this is true today. But even those who come back are finding it difficult to contribute substantially to their own education.

We also find that the whole unemployment picture, of course, in the country has affected us and affected our students in substantial ways. But I was speaking specifically of the Justice Department's involvement in postsecondary education.

I was not speaking about the civil rights thrust generally on the involvement of the Office of Education. I think that as to the handling of financial aid, for example, that something can be done in that office so that students will know in plenty of time whether or not they are going to get the financial aid every year.

We have students waiting around until the semester ends and the second semester has begun who are waiting for their checks. That is just a poor way—you know, I don't want to criticize the Administrator of that office, but I don't know what he does.

But I know that if I did that, I would be out of business.

Mr. **Simon**. Mr. Gunderson.

Mr. **Conyers**. Mr. Chairman, could I just get a nominal response on the one question from the other two witnesses?

Mr. **Simon**. Yes; the gentleman from Michigan is entitled to that.

Mr. **Burse**. Congressman Conyers, my comments will relate, I think, directly to the Civil Rights Division in the U.S. Department of Education because that is where most of my dealings have been.

From my perspective of what they have done in Kentucky, I don't think there has been necessarily a withdrawing back from the civil rights laws in my State. In fact, they have been very vigorous and sometimes, in my opinion, a little bit too vigorous. I think that they have gone overboard.

But they are constantly requiring the State to do things that it needs to do.

In terms of educational opportunities for blacks and minorities, I think the opportunity to get that education is now there. But having the opportunity is a little bit different from having the financial resources to be able to afford that opportunity.

Like President Stone, we at Kentucky State are having problems with Federal financial aid and how the laws are administered. Just one example, the national direct student loan program: Prior to 1972, Kentucky State did not keep social security numbers on borrowers of that program. It is sort of hard in 1982 to try to collect from a student who I don't have a social security number on.

But the Department never articulated or promulgated any regulations in terms of administering that program, I think, until probably the midseventies, so it places us at a disadvantage.

But going much further in terms of how they propose to change Federal financial aid and in the administering of National Pell Grant Office—we had commencement at Kentucky State last week, and I had to give some students blank diplomas for the simple reason the Pell Grant Office had not processed those students' activity records.

Mr. **Stone**. May I just say this in connection with the collection of NDSL loans, et cetera, we had a procedure at Southern where we turn over the collection of these obligations to private agencies, and without much success. We also turn them over to the Attorney General, without much success.

Once we go to the private agencies, the collection agencies and Attorney General, and they fail to collect, we think that we have done just about all we can do. It doesn't serve any useful purpose that we can see to have the Federal Government tell us what we haven't done.

Mr. **Casteen**. Mr. Conyers, I'll answer your question very briefly. Let me say that one of the chief concerns that both OCR and Virginia had in 1982 was evidence to the effect that educational opportunity for our black students simply had not kept pace with what was anticipated in 1978.

For example, the calculated numerical disparity in the rate of progress from high school to college under the 1978 plan went from about 450 students to almost 1,500 students in the progress of a plan that was supposed to build equality of opportunity.

The concern we had was we were looking at a lower rate of progress from high school to college, preceded by a lower rate of enrollment in college preparatory courses in high school, followed by a lower rate of success in college courses.

We were determined to find educational remedies. Let me say at the risk of repeating something I said earlier, I think the chief problem is that in the States—and there are, I think, six or seven of us with the 1978 plans, the criteria that we were forced to use in developing the 1978 plans were simply faulty.

They do not understand how colleges work. The people who prepared those criteria were not admissions officers. They were not academic counselors. They were not persons conversant with what it takes for students to succeed.

They were persons conversant with the *Adams* case. That is a great deal of the problem. The solution lies, I think, and I suspect my colleagues today would agree, in school and college classrooms.

The fact is that those 1978 criteria do not address the realities of what happens as students choose their courses and progress from one level to another and so on.

Mr. **Simon**. Mr. Gunderson.

Mr. **Gunderson**. Thank you, Mr. Chairman.

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Let me begin by saying that as I listen to your comments regarding problems of student financial aid that I believe the chairman of our committee has some legislation in that is intended to speed up and clarify that process.

Your colleges are not the only ones in the country that are having that problem, let me assure you.

I would like to, as I listen to your testimony, see if we can pinpoint the greatest problem with either the Office of Civil Rights or the Department of Education as they are working with you on desegregation efforts.

Is it lack of effort or initiative on their part? Is it mandates that simply cannot realistically be met in the proper timetable or is it duplicative and confusing mandates, as I think you suggested in part of your testimony?

What do you see as the greatest problem in trying to achieve desegregation through your efforts with either OCR or the Department of Education?

Mr. STONE. I think perhaps the greatest problem that I see is that the Government sometimes is not persuasive enough in helping to create a proper understanding of the difference in what I perceive to be the philosophy of blacks and black institutions and the philosophy that brought on the segregated institutions in the first place.

I believe in quality and excellence as much as anyone does. I believe that everyone should have the opportunity, and until my opportunity is as good as yours, then I am not likely to have the same type of success that you have if we are equally talented.

Consequently, I think that if you start out behind, you either remain behind or you have to run faster, harder, longer than all the rest.

I think that that has to be understood. I think that what we have to do is to provide ways and means of helping black youngsters at every level catch up.

Even the College Board has said that there is a relationship between achievement on various tests and socioeconomic background and condition.

I don't think that enough of our educational systems give consideration to this. I think the Federal Government can provide leadership in that, and not worry so much about bodies, white and black bodies, but worry about the quality of education, the quality of the experience that students are likely to receive.

To be sure of that, there should be no discrimination based on race, color, or creed. But it is not important to me whether we get a large number of whites at Southern University.

What is important to me is that we get the money from the State of Louisiana and the opportunity, the teaching, the programs and all of these things to provide the kind of education at Southern University that will make excellence in the market commonplace.

You do that, you have to do some of this by persuasion. You do some of it by coersion, through litigation, et cetera. But you must have, I think, all of these things, and that must be the goal.

I don't think that has been the goal. I think we have missed the boat on this many years ago by just assuming if you get blacks and whites at the same place, they would learn at the same rate and all of this sort of thing, and nobody gave enough attention to the fact that they weren't coming out the same residential neighborhoods or the same family backgrounds.

Mr. **Casteen**. Mr. Gunderson, it seems to me the chief problem we have seen—there are two pieces, I guess. No. 1, I understand from the people we have worked with at OCR that the States have generally resisted OCR's participation in developing plans, and that in some cases the negotiations had collapsed, and OCR has more or less dictated a plan from time to time.

We went into this discussion in 1982 and 1983 determined to see better schooling in our State. We went into the discussion with a fairly solid background in terms of serious study of the State students over the course of the years in the 1978 plan.

We operated also in the context of growing national concern about equality of opportunity as an outcome of schooling. So we were going into discussions with a thesis, and also with a determination to deliver more productive kinds of schooling.

That is a piece of it. The States clearly do have to take a more active role in formulating a philosophy.

Second, especially in developing the enhancement strategies for the traditionally black institutions, at the State end we went directly through the institutions, the provosts, the deans, the presidents, actually went away with me and we locked ourselves up in an isolated house and worked out strategies to enhance what is there, to try to avoid some of the pitfalls apparent in other enhancement schemes.

That process of working directly with the people who have to do the job, I think, is an important part of it. That is what was missing, I think, in the 1978 set of negotiations. Political leaders and employees of U.S. bureaucratic agencies in Washington locked themselves up in rooms and came up with plans.

That is not how one changes education. It is a constituent operation.

I think the success that we have on the two campuses represented today and in campuses in Virginia and elsewhere—to the extent that we can be satisfied with their results and in many places we shouldn't be totally satisfied—results from this head-to-head collaboration from the State people who pay the bills and the local campus officials who have to deliver the programs.

Without that kind of participation as equals, we don't have a program.

Mr. **Burse**. I think the problem, as I said earlier, has been a lack of understanding or sensitivity of the U.S. Department of Education to what is educationally sound in the State.

When Kentucky's plan was first developed, and one was submitted in March of last year, there was not that much participation by Kentucky State University.

When we filed an update in January of this year, there was a lot of participation by Kentucky State because I requested and demanded it. We at Kentucky State went in and looked at what we required to do and came up with programs and plans that we felt, based upon our experience, would enhance our institution.

When those were submitted to the U.S. Department of Education, they questioned it: "You said it will do this, it really won't do that."

At some point the responsibility of the authority for the development of those plans has to rest with the people in the State, and I think the U.S. Department of Education's job is to insure that once we said we were going to do certain things, they expect that we do them, rather than coming in to question what we are doing.

Just give you an example. I said earlier Kentucky State has become Kentucky's public liberal arts institution with the lowest student-faculty ratio.

In order to define Kentucky State as a liberal arts institution we did two things. We redefined our general education curriculum at Kentucky State, and we decided to start a program which we called the Whitney M. Young College of Leadership Studies.

It is based upon the great books program of St. John's College in Annapolis, Md. And it is a 2-year program. When we said we were going to do the second program, they questioned whether or not we really knew what we were talking about in what we wanted to do.

Quite frankly, I got offended by it. I think if the Department wants to continue to do a good job and do a good service that it has to accept some of things that the States or the institutions bring forward in their effort to desegregate their student body.

Until you get that sensitivity in the Department itself—you know, I am not certain that that is something you can legislate or write—but I think the people in the Department must know that there are some basic things that are educationally sound for institutions of higher learning, and that not all knowledge about sound institutional programs are found in the Department of Education itself.

Mr. SIMON. Mr. Boucher.

Mr. BOUCHER. Thank you, Mr. Chairman.

I would like to begin by complimenting Secretary Casteen on his well-prepared and well-presented testimony this morning and ask him a couple of questions concerning it.

How do the 1983 amendments to the Virginia desegregation plan affect Virginia's traditionally black institutions? Will those amendments accelerate the process of desegregation there?

Mr. CASTEEN. Mr. Boucher, I think they will. Let me make clear that the strategy that we are pursuing was begun in 1978 and refined in 1983. The strategy involves essentially what has happened at Kentucky State, as I understand it, identifying high demand programs, attempting to see to it that we don't duplicate the program on several different campuses, that is, that you don't create multiple competitors for the same pool of students.

Enhancing that program by providing the necessary additional facility positions, sometimes salary increments, other kinds of support that make for a strong program, seeing to it that the program that is to be enhanced does not compete for funding directly with programs that are not targeted in that fashion.

For example, in developing an accredited business program, it is necessary to pay higher salaries to support a lower faculty/student ratio, to develop microprocessor facilities, and so on?

Our experience with programs of this sort under the 1978 plan has been mixed, but at their best—for example, the business and technology programs at both Virginia State and Norfolk State, the nursing program on both campuses, the program in social work at Norfolk State—the high demand programs have, indeed, drawn students from both races in proportions that are more or less compatible with the overall portion of the general population.

Another way to put that is the evidence has shown that if we provide a good product, identify it in a proper way, place it properly in the marketplace, we can, indeed, overcome whatever traditions may tend to separate students by race.

The strategy is sound in concept. The question is how best to identify the programs that are compatible with the mission at a given institution.

In the next phase of our compliance, the part that we expect to run through the 3 years that began in January, we will be developing additional kinds of excellence—I guess is the term—in high demand programs on both campuses.

We are also working with the management, especially, of Virginia State. Both of my colleagues have mentioned the problem of maintaining proper accounts on guaranteed student loans and so on.

One of our TBI's, Virginia State, is engaged in negotiations with the Federal Government concerning uncollectable loans adding up to substantial sums of money—a sum that could be devastating to the university and taken out of the university budget.

Both universities need enhanced admissions operations. They cannot compete with the kind of professional and well-placed admissions operators who represents, say, Virginia Tech, William and Mary, and UVA.

We have provided the expertise to develop the systems for them and we will provide for staff training and new equipment and so on, during the 3 years.

The general approach, I think, has to be to make the institution independent and self-sufficient. The history of inequitable funding is a matter of record.

The fact is that the 1890 land-grant institutions, for example, did not receive equitable shares of the total land grant appropriation. Clearly it is a Federal interest that such institutions receive what they are supposed to receive.

It clearly, also, is a State obligation to see to it that it supports an institution that experiences a time of difficulty, as Virginia State has—three presidents, I think, in a year and a half, for example. That happens.

We have an obligation as the institution's ultimate owner and protector to guarantee that the process of education doesn't suffer, and under the plan, we are also obligated to see to it that it continues to improve. So we have taken that to be the State's business.

Mr. **Boucher**. I understand that Judge Pratt's ruling requires that substantial progress be demonstrated by April 1984. That, in turn, is going to mean that in the fall of 1983, there would be a rather substantial increase of black enrollment at traditionally white institutions.

Do Virginia's TBI's at this point have a sufficient number of black applicants for the fall of 1983 to show substantial progress by April 1984?

Mr. **Casteen**. At the moment, Mr. Boucher, I don't have all of the facts to answer the question. I met on Sunday night with the admissions travelers for all the 4-year colleges.

About two-thirds of them indicated that they expect to achieve or exceed the goals that are prepared in the plan. Others indicated that they are having serious problems.

The pattern is interesting. For example, in the western part of the State where the black population is very small the institutions out there report that they are having trouble identifying students who might be eligible and available.

That makes some sense, because the State is a fairly large one and there are distinctive regions. It is the case that students going to college as the first generation student in their family and also students going to college from black families typically have more concern about being close to home than do students whose parents might have gone to college and so on.

So there are some facts of demography that can make that difficult. Substantial progress would include the progress on the school reform programs, on our financial aid programs, on funding from the general assembly. That is all in place.

My feeling is that we are making substantial progress as the goals and timetables might measure it because of extraordinary efforts made by the college.

Mr. **Boucher**. So even though the judge's ruling does place some severe restraints on the State in terms of scheduling, you feel that Virginia will be able to show substantial progress by April of next year?

Mr. **Casteen**. Places the strain, and frankly, it raises questions as to the credibility of those who are determining how we are supposed to do the job, simply because the timetable contained in that order does not match the school year, and it is necessary at some point to acknowledge that we are dealing with schools.

Mr. **Boucher**. Thank you, Mr. Casteen.

Mr. **Simon**. Mr. Packard.

Mr. **Packard**. Mr. Chairman, how much do you estimate the cost to either implement the decisions that have been made by the court or to defend or to represent yourselves in the court actions? At this point, how much of a cost have you borne and who is sustaining those costs?

Mr. **Stone**. Mr. Packard, the Southern University has spent, I believe, $125,000 so far for the negotiations and everything leading up to the consent decree, and maybe one or two appearances subsequent to that time. These costs are being borne by the State.

I know you didn't ask this question, but let me also say that there is a difference as to the amount of money that we think is involved in the consent decree. The Commission on Higher Education says it will cost $50 million for the enhancement of black colleges and universities.

We think the sum is closer to $126 million. So I can see the expenditures of additional moneys if we are that far apart.

The bottomline, Mr. Packard, with us—and I don't mean to change the subject—the bottom line with us is not what happens to Southern University or Grambling State University, but how the opportunities for black youngsters in the State of Louisiana to receive an education have been improved.

You see, they can make Southern University the Harvard of the South, and fix it so that we could only serve a very limited number of the people in the State of Louisiana, or not provide opportunities for other blacks in the State, and we wouldn't think that very much had been accomplished.

Mr. PACKARD. That was my next question. In your judgment, has the expenditure of the money and the implementation of the decision had an effect on the quality of education?

Mr. STONE. I think, first of all, it has had a very pronounced effect. We now are able to spend $230,000 a year for faculty development at Southern University from the consent decree funds alone.

Since I have been president, about 9 or 10 years, we have never been able to put more than $10,000, maybe $20,000 in the faculty development.

We are spending $1 million a year for developmental purposes, developmental education programs, in addition to the Federal moneys that we have been spending in those areas. Additionally, we have provided additional scholarships for students and we have some $50,000 or more, I believe, for "other race" scholarships at Southern University.

Mr. PACKARD. The source of those additional——

Mr. STONE. All State moneys.

Mr. PACKARD. OK.

Mr. STONE. In addition to that, we, like the others, redefined our mission. We couldn't get any money at all from the State in past years for research.

If we did any research, all that money would come from the Federal Government. We think now with our new mission, we are going to be able to get substantial money for research.

But more than that, we think that the State now is under an obligation to see to it that within a certain period of time the numbers of blacks who seek higher education approximate the numbers of whites that seek higher education.

There are some changes in Governors. Governors in Louisiana today on higher education boards must reflect the racial makeup in the State, the State's population, except that it must be reflected inversely for Southern University.

We think that these are substantial gains. They are going to be worth more to us than the million dollars that we could have spent for counsel.

Mr. SIMON. First, a comment to President Stone. I am going to check with Chairman Edwards about the possibility of simply making an inquiry to the Justice Department on their monitoring of the consent decree as far as your Ph.D. program.

Secretary Casteen, you touched on something that I think is long range, pretty fundamental, and that is this comprehensive program.

I applaud what you are doing there. But let me direct this question to all three of you.

Is there some way of developing an intensive summer program, or some kind of compensatory program for young people who have gone to schools that, frankly, are not quality schools, who have the basic ability and who ought to get something more than remedial math when they enter Southern University or Kentucky State? I don't mean disrespect for your remedial math programs.

Is there some way that we can be doing something intensive in the meantime? The difficulty of a comprehensive approach, it seems to me, is if it is sound, we have to move in that direction, but we have this time lag here.

If I can direct that question to all three of you.

Mr. CASTEEN. Two or three quick responses. No. 1, the effectiveness of summer intensive programs in bringing students up to speed was well demonstrated back in the sixties.

One of the strange phenomena of the *Adams* orders is that they rarely include programs that can be shown to work. In the 1983 amendments, we have established three such programs for this summer. They have enrolled a total of 160 students.

I checked on Sunday evening and it appears to me that all but about 30 of the spaces have been taken. The model in the program that has existed at the University of Virginia since about 1968. Graduation record within 4 years for the students in that program is between 60 to 80 percent of those who entered.

That program differs from the conventional, remedial program in that it makes the assumptions that you just implied. That is, the students are able, that they don't need to have their hands held. They need a substantial challenge in reading, writing, and arithmetic.

Largely, they are to regularize methods and techniques in doing things. The 6-week program is designed to provide intensive contact with faculty, not with specialists who are brought in because the students are thought to need something unusual.

We built that program, in turn, on top of a program that I worked in about 3 years before we started that program. I taught at Maryland State College, which was formerly a predominantly black college on the Eastern Shore of Maryland.

That college was taking students from very weak high schools. It did not achieve the kinds of graduation rates that a more selective college would achieve, but it did an extraordinary job in the three R's. It was literally the three R's—reading, writing and arithmetic.

It was taught systematically and carefully by very demanding instructors for 8 weeks in the summer. I suspect that other institutions have had the same experience.

It does work. The irony is that we are late tying that into the general concept of the *Adams* plan, and it should have been there all along.

Mr. SIMON. Even the program you have with 160 students is a drop in the bucket?

Mr. CASTEEN. It is a pilot project. We needed to make sure that the methodology will transfer from one kind of campus to another.

You can imagine going from a highly selective institution to an open-enrollment institution.

One needs to be careful to have a program that will serve the needs of students with different backgrounds that are represented. You simply can't export the program wholesale.

The principle that was suggested somewhere else here this morning about not applying in one State something that necessarily works in another State is a good one. It works within States, too, because institutions have different characters and different clientele, and so on.

Mr. STONE. Mr. Simon, I have serious concerns about what I fear is likely to happen and what may result in a restructuring of education in this country. I am afraid that opportunities are likely to be denied to a large number of students.

Not all of the learning takes place in the classroom, but learning should take place in the classroom, and I think that all that is needed for learning to take place in a classroom is the teacher with the necessary competencies who is determined, and dedicated, and willing to teach, a good atmosphere, adequate programing, and a student that is willing to apply himself.

I think in order to get all of these in the classroom so that you can have the learning that is necessary some leadership is required. I think that that leadership can come from a lot of levels, but I think that the Black Caucus, Congressional Black Caucus, is undertaking some responsibility in this regard, in that they are concentrating upon the family.

I think that I don't want to get into the argument of which comes first, the chicken or the egg. We recognize that we are not all equally talented. Some are dull witted, but may be able to achieve something.

I think that we must make sure that our elementary and secondary schools are structured to deal with helping individuals achieve whatever potential they have to achieve at that level, and that they must take into consideration individual differences.

I think they can give us a better student at the college level. We recognize that not all students should go to college.

But students must be counseled. We must be sure that counseling at the secondary levels is fair insofar as race is concerned, and we must also be sure that it is competent.

Counseling is also needed in the colleges and universities. We think we would rather not be involved in developmental education at the college level.

But neither do we believe that we should lose a single generation of our students, and we believe that once they show up, that we have the responsibility of helping them develop whatever potential they have, even though they may not meet our standards for graduation.

They should not be graduated, of course, until they meet the standards that have been set reasonably high until we think they can succeed in the marketplace, and so on.

I don't normally advocate commissions of various kinds because usually they conduct studies, they go home, they leave things pretty much unresolved. But it does seem to me that the Federal Government could find a way of providing some leadership in the areas that I have just talked about, and that the best scholars of all of the groups in this country could be called together for the purpose of looking at the problems of education.

Otherwise, I fear that what we will have is a denial of opportunity for a large number of students who though highly talented don't score above 700 on the SAT or don't make 15 on the ACT.

I am afraid that a return to the basics will be a return to a basics with a new definition of what the basics are. I think some leadership should come someplace, otherwise large numbers of blacks and other minorities in this country are going to be denied educational opportunities.

Mr. SIMON. Thank you. Dr. Burse.

Mr. BURSE. Mr. Simon, I advocate the implementation of such a program. I think there is some validity that those programs, in fact, do work.

You know, in Kentucky now we are presently getting ready to start our summer program, but it is for the high-achieving kids already at the top.

There is a return around the country, I think, to doing something for those high-achieving kids, and I think that it is good, but at the same time I think that there are a lot of what I like to think are diamonds in the rough in many institutions who, if they were exposed to what is out there and available in such an intensive program, they would be able to do that.

Presently on our campus we are in the process of putting together proposals to submit to the National Endowment for the Humanities. They requested a proposal based upon our new college program, and we are going to try to get funding next summer, hopefully, for an intensive 6-week training session for kids who we know are lower achieving, but based upon what their counselors or teachers have seen, that if given fully the opportunity to be exposed to something for a short period of time could return to the classroom and do very, very well, so I would say that I do advocate such programs.

Mr. SIMON. Thank you. When you submit that request to NEH, you let us know. All right?

One final, very brief question to you. I was curious about this 30-percent demand on you for high demand in nonduplicative programs, which, first of all, seems to be contradictory because if it is a high demand program, other schools are going to have it.

What in the world are we talking about?

Mr. BURSE. That is the question I have been asking for the last 10 months. I still don't understand it.

I think it goes back to the *Adams* guidelines in that if you place what is considered a high demand program that is nonduplicative in any other institution in that State on a particular campus, then you will attract students to that campus based on the program, not based upon the institution being identified as a traditionally white or historically black institution.

That is what it is designed to do. I question some of the programs that have been tossed at us in terms of why don't you implement this program or try this program when, in fact, we are trying to redefine an entire institution, not a particular program.

My concern is that people in the Department of Education with whom I have discussed long and hard don't truly understand what

Kentucky is doing and how we figure that what we are doing is educationally sound as opposed to picking up a program at one of the traditionally white institutions and transferring it to Kentucky State or starting a new program.

The other thing that is tied into that is when they come in and start a new program. They give you 30, 60, 90 days to start a new degree program. You don't do it that way.

It takes sometimes a year or 2 years to develop a degree program that you feel comfortable with. It goes back to the sensitivity about how educational institutions operate, and what is educationally sound for them.

Mr. Simon. I think your points are valid.

Mr. Conyers.

Mr. Conyers. Thank you, Mr. Chairman.

I have three questions I want to raise, and if my time doesn't get around, we will figure out how to get back to them.

The first is with reference to the statistics in both your schools and States with reference to the relative ability of black and white students to enter into the higher educational process and stay in it and to graduate.

You can speak generally to that now, and submit for the record any additional specifics.

Mr. Conyers. The second thing I would like to talk about is whether or not through the lawyers that represent your schools you come across any interpretations of title VI or other civil rights laws with reference to higher education in terms of policies and practices that have been more restrictive rather than more supportive of the original intentions of that law.

Then, third, I would like to discuss with the commissioner from Virginia the *University of Richmond* case, which appears to me on its face to have an incredibly restrictive connotation, not only within the States, but eventually if picked up in other circuits, it is for everybody.

Mr. Casteen. Mr. Conyers, on that case I am not competent to speak. That is a private university.

I am aware that the case is seen in the community of persons concerned about title VI and title IX and so on to be a major setback. But I do not know the details at all.

Mr. Conyers. Well, I suggest that we make them available for you because if I am not mistaken, and I would like counsel to feel free to involve itself, this case would impinge upon the public school system, as well as the private school system. Am I right, counsel?

This isn't a private school decision?

Mr. Blakey. Only in the sense that that is who the defendant is. It will impinge on what the Department's Office for Civil Rights can and cannot investigate. So in that sense, yes, Mr. Conyers, it will impinge on investigations affecting all types of postsecondary institutions in terms of investigating complaints regarding title VI, title IX, and possibly section 504, as well.

Mr. Conyers. Thank you, counsel.

Further, I understand that it would allow Federal funding to go even where there would be discrimination in other areas going on in the university other than the specific one complained about.

In other words, it creates a selectivity of enforcement that could very easily be seen to have far-reaching consequences. I would hope that you could familiarize yourself with that provision because I think it may be a serious error to assume that that case has no consequence to you and the schools under your jurisdiction.

Mr. CASTEEN. Mr. Conyers, let me make clear that it wasn't that I see the case as having no consequence, it is that I am just simply not expert on that case. It has not yet come into the area that I administer and regulate.

I agree with you that my understanding of the decision and my reading of the newspapers implies that the concerns you have are probably legitimate concerns, but I just haven't seen it face to face.

Mr. CONYERS. Well, the strategy of enforcement of the law would apply everywhere throughout this circuit, the fourth circuit, so the fact that it is in the private area, could not have anything to do with it.

The interpretation that they are putting on the enforcement would apply throughout the circuit far beyond your State, for public and private institutions. Perhaps there are other witnesses who are going to go into this, and you were probably not asked to shoulder this burden yourself, but it would sure make me feel better for all the thousands of people who could be adversely affected in your State that you would let me know whether this case has some implications to you and the students in the schools under your supervision.

Mr. CASTEEN. I will find out and write you a letter, sir.

Mr. SIMON. All right. I will write you back to acknowledge receipt of the letter. I appreciate that.

Now, what about the statistics?

Mr. BURSE. Mr. Conyers, in Kentucky we presently have a college-going rate among blacks in Kentucky that is higher than among whites, but I temper that by stating that Kentucky has the lowest high school graduation rate of any State in the Union.

Even the low number who are going, the black college-going rate is much, much higher. The numbers that remain, or are retained at the institutions till graduation, are very, very low.

My guess is—and I don't have the exact numbers on it—that although Kentucky State, which has 10 percent of all black students in public higher education in Kentucky, and we graduate 25 percent of all black baccalaureate degree recipients, the retention rate among other institutions is very, very low.

As a part of our State's desegregation plan, we have an intensive study of retention rates presently going on, and I think this year's graduating class will give us the first year results of what has happened in the past.

As to your second question of lawyers and their interpretations of title VI, we at Kentucky State have only been negotiating with the U.S. Department of Education. We have not been involved with Justice or in the court system as of right now.

In those negotiation sessions I have not run across anywhere or heard anyone give any interpretation to title VI that is more restrictive than the true meaning of title VI as opposed to be supported by the——

Mr. **Conyers**. How many people graduate? This 25 percent black, what number are we talking about?

Mr. **Burse**. That is 25 percent—we graduated this past Saturday, I think, 260 graduates, of which 230 were baccalaureate degree recipients, and of that 230, probably 175 of them were black, and that is about 25 percent of the graduates in the State.

Mr. **Conyers**. So, Kentucky, the whole State graduates about 600 black students a year, roughly?

Mr. **Burse**. Probably not much more than that. That is by the public institutions.

Mr. **Conyers**. That is out of what kind of potential black student higher ed enrollment?

Mr. **Burse**. I would have to get you some numbers on that. I don't have it right at my fingertips.

Mr. **Conyers**. When you said the entry level is higher than most, how does that compare, though, with the white college student entry level?

Mr. **Burse**. The entry rate among blacks is higher in Kentucky than it is among whites. I think the last time I saw some numbers, about 45 percent of the blacks who graduated from high school went on to college.

Whereas something like about 39 percent of whites that graduate from high school went on to college.

Mr. **Conyers**. Then they don't graduate?

Mr. **Burse**. Then they don't graduate, and that is a problem.

Mr. **Conyers**. OK. Let me turn to President Stone.

Mr. **Stone**. Mr. Conyers, my information is—and I can't vouch for the figures—but my information is that about 65 percent of the black students who enter high school in Louisiana actually receive diplomas, either by graduation or they later get the GED.

At Southern University we enroll presently approximately 13,000 students. Our enrollment is down from something in excess of 14,000.

We have a rather high—what we think is a rather high—attrition rate. As you well know, all Louisiana public institutions are open admissions institutions, although there certain specific qualifications that an individual must possess to enter certain programs in the institution.

High attrition rate, according to my best estimates, would be about 30 to 40 percent. Of the students who enter Southern University, however, about 30 percent actually graduate. We graduate in excess of 2,000 students per year in the Southern University system.

We also have graduated, I would think, about 75 percent of the black lawyers who practice law in the State of Louisiana. Incidentally, our graduation rate of black lawyers that actually pass the bar is much higher than the rate of those who actually enter and graduate from Louisiana State University and other universities in Louisiana, and actually pass the bar.

As a matter of fact, I looked at some figures a year or so ago, and 87 percent of all of the students who had graduated from Southern University Law School up to that particular time who had shown an interest in practicing law in the State of Louisiana were actually members of the Louisiana Bar.

I looked at the recent figures for the last graduating class, and I have forgotten exactly what the number was, but only five students actually failed the bar outright, and if all of those who were admitted to the bar and who received conditionals actually wound up passing the bar, 90 percent of our latest class would have passed the Louisiana Bar.

Some of those who failed the Louisiana Bar, two of them, I believe, and we had only five, as I said, who failed outright, have been admitted to the bars of other States.

Mr. CONYERS. Let me just put these questions on the record, because I don't want to take up any more time.

But I think that we have to put in front of the high school graduation rate the dropout rate, don't we, to get a true picture of what that means in terms of black and white entry?

Mr. STONE. I would think so, yes.

Mr. CONYERS. The second thing that occurs to me is that we need some kind of description, Dr. Stone, that you can provide us with in statistical terms of the number of blacks as compared to the number of whites that are going into the system—and I am not sure whether I should be asking you for your university or for your overall higher university figures.

Mr. STONE. Mr. Conyers, I don't have them. I can get those figures for you from the Office of Education and mail them to you.

Mr. CONYERS. What about the capacity to stay in school after you get there?

Mr. STONE. As I say, we have a rather high attrition rate. We have a large number of students who leave Southern University for academic reasons, as well as for financial reasons.

We have instituted, as I indicated earlier, some programs that would help us to determine that we have done, as a matter of fact, all that we could do for these students before they are actually forced out of the university.

You see, we don't think that they should leave if we haven't done our part. I want to be sure we have done our part.

Mr. CONYERS. I understand that there are fewer blacks being graduated in law and medicine than would sustain the present low level. So this comes as great news that you are doing so well.

Include in your figures you send me the number of white lawyers and black lawyers in the State so we can compare it with the ratio of population.

Mr. STONE. I will be happy to do so.

Mr. Conyers, you might be interested in this. A few years ago we were under an attack because so many of the graduates of the Southern University Law School failed to pass the bar the first time they took it. We started to feel very bad about that.

But we did some research, and we looked at the figures around the country, and we found that blacks graduating from what was thought of as some of the pretty good, predominantly white schools in the country were also having trouble passing the bar the first time they took it.

As a matter of fact, we found that our record was better than most of them. But, nevertheless, we did some things to improve upon our records and the statistics, we think, reflect that.

In reference to the second question that you asked about an expansion of the restrictions of title VI, we notice in the negotiations with the Justice Department that contrary to what apparently is taking place in Kentucky, the Justice Department did not insist on any transfer of programs from any of the predominantly white institutions to the predominantly black institutions.

That is, there was no attempt to dismantle any of these institutions. I personally am opposed to dismantling any institution.

We also point out that our lawyers took the position that the success or failure of a plan should not be determined by the number of white faces that happen to show up on the black campuses.

We recognize that our law school is about one-third white, and we have less than 1 percent of our population coming from the white race in the graduate school. We realize that this may not appreciably change even though added quality may come to Southern University overall.

It may not change even if Southern University should become the Harvard of the South, so long as many of these students can get the education or the programs that they want in the predominantly white schools. We think that all this will probably change over time.

The cooperative programs, we have found, have a better impact on that. For example, we found that by bringing teachers from LSU and teachers from Southeastern Louisiana University to Southern University to offer courses and to teach white and black students, that some of the students in those schools come over to Southern University.

We also found our program of cross registration provides an added convenience both to the white students and the black students who find that they may be able to take a course at Southern University or at Louisiana State University that is not presently being offered at the other institutions.

We think some imagination can be used to help resolve these problems. Having said that, we still have a lot that remains to be done in Louisiana.

Mr. SIMON. We thank all three of you very much for very helpful, constructive testimony.

The statistics that were talked about, we will enter in the record. Mr. Conyers can share them with our subcommittee staff here.

Mr. SIMON. The hearing stands adjourned.

[Whereupon, at 11:43 a.m., the subcommittee recessed, to reconvene at 9:30 a.m., Wednesday, May 18, 1983.]

HEARINGS ON HIGHER EDUCATION CIVIL RIGHTS ENFORCEMENT

WEDNESDAY, MAY 18, 1983

House of Representatives, Subcommittee on Postsecondary Education, Committee on Education and Labor; Subcommittee on Civil and Constitutional Rights Committee on the Judiciary,
Washington, D.C.

The subcommittees met in joint session, pursuant to call, at 9:38 a.m., in room 2261, Rayburn House Office Building, Hon. Paul Simon (chairman of the Subcommittee on Postsecondary Education) presiding.

Members present: Representatives Simon, Edwards, Conyers, Packard, Sensenbrenner, Petri, Kogovsek, and DeWine.

Staff present: For Education and Labor—William A. Blakey, counsel; Maryin L. McAdam, staff assistant; Lisa Phillips, staff assistant; Electra Beahler, minority education counsel; Betsy Brand, minority legislative associate; for Judiciary—Ivy L. Davis, assistant counsel; Phillip Kiko, minority associate counsel.

Mr. Simon. The subcommittee hearing will come to order.

This is the second day of our hearings on civil rights enforcement on higher education. These hearings are being held jointly by the Judiciary Subcommittee on Civil and Constitutional Rights and the Education and Labor Subcommittee on Postsecondary Education.

For the past quarter century the Federal Government has acted to protect the victims of illegal discrimination and to insure equality of educational opportunity. We have helped to break down the barriers that excluded from the classroom students who were black, or who did not speak English, or who had a disability. The Congress, Federal agencies, and the courts have insisted that students be allowed to reach their full potential, a potential based on ability rather than the cruel and confining stereotypes growing out of sex, or race, or national origin, or handicap. We have done this out of an understanding that education is often necessary in order to avail oneself of other opportunities that our rich Nation has to offer.

It is proper and essential that when our Government acts, using the tax dollars all of us contribute and the authority all of us vest in it, that it act fairly. Those programs and activities which receive public funds bear a special responsibility to be free of discriminatory practices.

Nearly three decades ago, the Supreme Court declared that a society built on prejudice and division could not be tolerated. Nearly two decades ago, Congress affirmed that commitment by mandating in title VI of the Civil Rights Act that the Federal Government would not support programs or activities that discriminate on the basis of race, color, or national origin. One decade ago, Congress extended this prohibition by refusing assistance to educational institutions that discriminate on the basis of sex or handicap, through title IX of the Education Amendments and section 504 of the Rehabilitation Act.

These requirements have been put into place and have begun to take hold, despite years of obstruction and delay. Insuring that federally assisted programs do not discriminate has involved substantial financial and administrative resources, but simple demands that we persevere.

We have made important progress. In higher education, many thousands of students now have access to opportunities previously denied by restrictive requirements or narrow, stereotyped expectations. We must continue to move forward.

Accusations have been made that in the past 2½ years, the Federal Government has stepped back from its responsibilities in civil rights. Critics have noted increasingly narrow interpretations by Federal officials of what constitutes illegal discrimination. It is feared by many that rather than standing with the victims of discrimination, Federal officials have merely stood to the side. If true, this is unacceptable. Congress has spoken clearly. We expect that civil rights laws will be enforced, and enforced vigorously.

Today we will be hearing from the officials whose sworn duty it is to insure that civil rights are guaranteed in higher education. I welcome them and look forward to their testimony about what is being done to enforce the law.

We have three witnesses, and if there is no objection, we will ask all three witnesses to appear and we will hear from all three. Then we will have questions.

I will now call the three witnesses, Harry Singleton, William Bradford Reynolds, and Mary Frances Berry.

Before we hear from the witnesses, let me ask my colleagues if they have anything to add in the way of opening statements.

Mr. EDWARDS. Well, Mr. Chairman, I have nothing to add to the very excellent opening statement that you made. I think these are very important hearings in an area that the Judiciary Subcommittee for Civil and Constitutional Rights has not been involved in, so we welcome the opportunity to participate because we do have an interest and some jurisdiction here.

We compliment you, Mr. Chairman, for your many years of splendid work in education and the immense contributions that you have made to public education in our country. Other than that, I am looking forward to hearing from Mr. Reynolds, and the other witnesses today.

Mr. SIMON. Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman.

I have nothing to say, other than to welcome the panel. I am looking forward to their testimony. Unfortunately, I will be testifying in another committee later on this morning so I will not be able perhaps to remain for the entire testimony, but I am looking forward to it. It is obviously a very significant issue to all Americans.

Mr. SIMON. Our first witness is Harry Singleton, Assistant Secretary for Civil Rights with the Department of Education.

STATEMENT OF HON. HARRY M. SINGLETON, ASSISTANT SECRETARY OF EDUCATION FOR CIVIL RIGHTS

Mr. SINGLETON. Thank you, Chairmen Simon and Edwards, Mr. Packard. I ask that my written statement be included in the record——

Mr. SIMON. It will be included in the record.

Mr. SINGLETON [continuing]. And that I be permitted to use my allotted time to summarize salient information about the policies and operations of the Department of Education's Office of Civil Rights.

Mr. SIMON. Fine.

Mr. SINGLETON. There is a widespread perception that the present administration is not enforcing effectively the civil rights laws of the land and is openly hostile to civil rights issues and enforcement. I do not believe this perception is accurate. This administration, at least in the field of education, is committed to fair, effective, and efficient enforcement of the civil rights laws.

Frequent comparisons have been made between the civil rights policies and activities of this administration and that of the previous administration by those who claim that we are retreating from efforts to secure compliance with civil rights laws. Yet a careful look at the record, as is clearly demonstrated in my written statement, shows that the present administration, far from retreating, not only compares favorably with the last administration, but is steadily advancing on many fronts to obtain compliance from those who violate the civil rights of minorities, women, and handicapped persons. I have looked forward to this opportunity to shed some much needed light on this important issue.

Since the last year of the previous administration, OCR's workload of outstanding complaints has been reduced substantially. The reduction, however, is not just attributable to a decline in the number of complaints received. Part of the reduction can also be attributed to an increased closure rate. We have made a sizable reduction in the backlog of cases inherited from the last administration, and we have accomplished this despite the fact that the complaints we are now receiving are more sophisticated and substantive.

Complaints alleging handicap discrimination represent the largest block of OCR complaint receipts, including those involving postsecondary institutions. Handicap complaints are frequently more difficult to resolve due to complex policy issues and court decisions which require OCR to treat the cases differently in the various judicial circuits. Also, complaints alleging multiple bases of discrimination have increased significantly. Last year, 15 percent of the complaints were multijurisdictional. This is over two times the percent of multijurisdictional complaints received in fiscal year 1981. These complaints are inherently more complex than the single-basis complaints because they usually involve a number of issues that require separate investigative procedures.

Of the substantive postsecondary complaints received by OCR—that is, those which were not frivolous nor incomplete—a greater number and percentage were closed by this administration as compared to the previous administration. Furthermore, in the substantive closures during the present administration, our investigations found more often for the complainant and produced more corrective action than those closures during the last year of the previous administration.

Probably the most salient factor which affects OCR's compliance efforts is the continuing application of the so-called *Adams* order. Since 1977, the *Adams* order has imposed a set of rigid timeframes governing the amount of time OCR may take to process and resolve discrimination and compliance reviews. These timeframes were arbitrarily set and, in my view, are counterproductive to effective enforcement of the law. However, while no administration has been able to fully comply with these time deadlines, this administration has made marked progress in meeting them. For example, during fiscal year 1982, OCR met 76 percent of its complaint *Adams* due dates, compared with 69 percent during fiscal year 1981, and 61 percent for the last 4 months of fiscal year 1980—the only months for which data is available from the previous administration.

OCR uses three principal techniques to seek compliance with the civil rights statutes. First, OCR investigates all complaints against recipients of Federal education assistance which alleges discrimination on the basis of race, national origin, sex, handicap, and/or age. Second, OCR conducts periodic compliance reviews of education institutions using survey data and other information to target those institutions where probable discrimination is more likely occurring. Third, OCR provides technical assistance to education institutions, usually in the form of workshops or onsite visits, to inform them of their civil rights obligations and acceptable methods for complying with civil rights laws. Although the concept of technical assistance was begun under the former administration, this administration has expanded TA efforts to all program areas in an effort to encourage education institutions to recognize and address their own civil rights problems.

Each compliance technique approaches civil rights enforcement from a different perspective. Through complaint investigations, OCR responds to specific instances of possible discrimination. Through compliance reviews, OCR investigates institutions where systematic discrimination is most likely to be occurring. Finally, technical assistance enables institutions to correct discrimination programs on their own before a complaint is filed or the institution is scheduled for a compliance review.

A most effective tool we have found to obtain compliance within the strict parameters of the *Adams* timeframes is our effort to achieve voluntary compliance. OCR has successfully implemented a number of innovative procedures for improving efficiency of case processing activities through voluntary compliance.

One such procedure, early complaint resolution, encourages complainants and education institutions to reach a settlement prior to a formal investigation by OCR. ECR has been expanded by this administration and preliminary evaluation supports the viability of this approach. During the first half of fiscal year 1983, a settlement was obtained in 44 percent of all cases where ECR mediation was attempted. Of that 44 percent, 54 percent involved postsecondary institutions. We will continue to monitor early complaint resolution to insure that the complainants' rights are protected fully and that the settlements are consistent with OCR's regulations.

This administration also adopted another procedural innovation which allows regional offices to begin negotiating a remedy with an institution immediately after discrimination is found, rather than wait until a formal letter of findings is sent to the institution.

While the Department has strengthened procedures for enlisting the cooperation of recipients, we recognize that voluntary compliance is a goal that cannot always be obtained. When compliance cannot be secured through voluntary means, we are fully prepared to initiate enforcement action. This administration's record of enforcement action matches that of the last administration, both in the number of cases referred to the Department of Justice for appropriate injunctive relief in Federal courts, and in the number of administrative enforcement proceedings instituted to terminate a recipient's eligibility for Federal assistance.

It is also important to note that we terminated Federal funds to a local education authority last year—the first time that such action has been taken in 10 years. The last time Federal funds were terminated, I might add, was in 1972 during the Nixon administration.

Your letter inviting my participation at this hearing posed several questions about OCR's activities, which are addressed in my submitted statement. I hope you have had sufficient time to review those responses and will permit me to provide more information, if necessary, to satisfy the inquiries. In this regard, I have with me, Mr. Chairman, copies of OCR's latest annual report that describes in more detail many of the items covered in my written and oral testimony, which I will leave for the benefit of the subcommittees' membership.

I believe the Department of Education's civil rights record speaks for itself. We are conducting an effective enforcement program in the area of education that compares favorably, and in many respects, surpasses the efforts of the previous administration. This has been accomplished with fewer staff, suggesting improved management and more efficient use of existing resources. In addition to traditional civil rights enforcement approaches, we have developed and encouraged new and innovative approaches to civil rights enforcement that foster greater communication between education institutions and minorities, women and handicapped persons, and we are utilizing untapped resources such as State education agencies to assist in the battle against civil rights violations.

On behalf of the Department, we look forward to working with your subcommittees in meeting the challenge of educational opportunity. I will be happy to answer any questions you may have.

[The prepared statement of Harry M. Singleton, with attachments, follows:]

PREPARED STATEMENT OF HARRY M. SINGLETON

MR. SINGLETON: Chairmen Simon and Edwards, and members of the Subcommittees, I welcome the opportunity to provide you with information on the policies and operation of the Department of Education's Office for Civil Rights (OCR) with regard to its enforcement of this country's hard won civil rights statutes at institutions of higher education.

The nondiscrimination provisions of law enforced by OCR -- Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and though this hearing will not focus on it, the Age Discrimination Act of 1975 -- are crucial to the fulfillment of our Nation's goal to provide equal educational opportunities to all our citizens. This Administration is committed to fair, effective, and efficient enforcement of these civil rights laws.

We estimate that the protections afforded by these laws extend to millions of individuals who attend thousands of educational institutions which receive Federal financial assistance. In higher education alone, roughly 12 million students attend 3200 colleges and universities of which 6.3 million or 52.5 percent are female, 2.4 million or 20 percent are minority group members, and 672,000 or 5.4 percent are what is known as "self-reported" handicapped persons. As these numbers indicate, OCR's enforcement responsibilities are tremendous.

In the Subcommittees' letter inviting my participation at this hearing, you asked that my testimony outline the status of compliance and enforcement actions during this Administration as compared with the compliance and enforcement record of the previous Administration. OCR's useful data base reaches back only to the beginning of FY 1980 due to the separation of the Department from the former Department of Health, Education and Welfare. Nevertheless, the data collected during the last year of the previous Administration can be compared with the average of this Administration's first two years in office with statistical accuracy.

As you requested, I will present data for the previous Administration on complaints received or closed between January 20, 1980 and January 19, 1981, and for pending complaints on the latter date, along with data for the current Administration on the average number of complaints received or closed during the following two calendar years ending with the status of pending complaints on January 19, 1983. In this instance, it is more important for comparison purposes to match the months over which the data is collected than the time period covered because of seasonal fluctuations. For example, more complaints are received during the active months of the school session than during the holiday seasons in November and December or during the summer months.

The available data show that more complaints were received under the previous Administration than under this Administration (3507 to 2130), as well as, more postsecondary complaints (890 to 551). The largest block of postsecondary receipts under the last Administration were

Title VI complaints (31.5%) followed closely by Section 504 complaints (29.3%). A shift occurred during this Administration with the largest block of those complaint receipts being Section 504 complaints (30.6%) followed by Title VI complaints (28.8%).

On January 19, 1981, there were 2235 complaints pending of which 625 (28%) involved postsecondary institutions. While on January 19, 1983, there were 1187 complaints pending with 384 (32.4%) involving postsecondary institutions. On both dates, the largest block of pending postsecondary cases was by far Title IX complaints (44.8% and 32.8% respectively). I might add, however, that we have not only made a sizable reduction in the backlog of old Title IX complaints inherited from the last Administration, but we also expect the proportion of presently pending Title IX cases to continue a steady decline. One half of these cases as of March 31, 1983 are employment related due primarily to last year's North Haven Board of Education v. Bell Supreme Court decision that validated OCR's jurisdiction over these Title IX complaints. This decision allowed us to reopen employment cases closed since July 1979 after a number of adverse lower court decisions voided our regulations governing enforcement in this area. Following the North Haven decision, I immediately instructed OCR's regional offices to begin processing all complaints involving allegations of employment discrimination on the basis of sex, and provided the offices with detailed guidance on the procedures for processing these complaints. OCR also updated an attorneys' manual and developed a manual for investigators to expedite enforcement of these cases.

In terms of our ability to effect compliance with the law, a comparison and analysis of complaint closures are the most revealing statistics. Under the previous Administration 2886 complaints were closed with 760 (26.3%) involving postsecondary institutions. The largest block of these closures were Title VI complaints (33.7%) followed by Section 504 complaints (27.8%). Under this Administration, an average of 2654 complaints were closed with an average of 671.5 (25.3%) involving postsecondary institutions. The largest block of these cases were Section 504 complaints (28.4%) followed by Title VI complaints (26.5%). Even though more postsecondary complaints were closed during the past Administration, of those cases classified as "substantive," a greater number and percentage were closed by this Administration (418.5 or 62.3 % compared to 364 or 47.9%).

Substantive closures are those which follow an investigation and a determination of findings, whether the findings indicate a violation or no violation; or those which are successfully mediated through OCR's Early Complaint Resolution process -- of which more will be said later -- or the Federal Mediation and Conciliation Service when a complaint contains allegations of age discrimination. More importantly, of the substantive closures in both periods, only 138 or 37.9 percent of those in the last Administration resulted in a finding for the complainant and corrective action while 170.5 or 40.7 percent of those closures did under this Administration.

The most salient factor which affects OCR's compliance program is the continuing application of what is known as the Adams order. In the 1970's, civil rights groups sued OCR because they believed the Office was not doing a very good job of enforcing the civil rights statutes. A resulting series of court orders, including the recent order issued on March 11 of this year, impose on OCR a set of rigid time frames governing the amount of time OCR may take to process and resolve discrimination complaints. Essentially, the order requires OCR to investigate every complaint it receives and to determine whether a violation occurred within 105 days, and, if there is a violation, to seek voluntary compliance within the next 90 days. If no resolution is reached, the Department has 30 days to initiate appropriate enforcement proceedings.

The Adams order also requires OCR to conduct compliance reviews. This means that OCR is not only obligated to investigate complaints filed against specific institutions, but the Office must initiate compliance reviews of institutions regardless of whether charges have been filed against them. The order requires that these reviews be geographically dispersed, and that they cover all the jurisdictional authorities as well as a variety of compliance issues. Furthermore, the Adams order stipulates strict time frames for reviews too, requiring that they be completed within 90 days from commencement of an on-site visit to an institution. If there is a finding of a violation, OCR has 90 days to negotiate corrective action, and if corrective action is not obtained, another 30 days to initiate enforcement.

Most of OCR's assignment of resources is dictated by the Adams court order. Almost 98 percent of OCR's staff are utilized in activities directed at complying with the order. Yet, no Administration has been able to fully comply with the deadlines imposed by the order. This Administration, however, has made marked progress in meeting the time frames. During FY 1982, OCR met 76 percent of its complaint Adams due dates, compared with 69 percent during FY 1981 and 61 percent for the last four months of FY 1980 -- the only months for which data is available. OCR also improved its compliance review record by meeting 30 percent [illegible] its Adams due dates in FY 1982, compared with 22 percent during FY 1981 and eight percent for the last four months of FY 1980. Thus, OCR's productivity and compliance activity is increasing, and, in spite of a 10 percent on-board staff reduction over the same time period.

The continued application of the arbitrarily set time frames mandated by the Adams order is cause for concern, particularly in light of our changing case load. Not only has there been a shift to handicap complaints, which are frequently more difficult to resolve, but OCR has also witnessed the receipt of an increasing number of multi-jurisdictional cases where violations are alleged under more than one statutory authority. Last year 15 percent of the complaints were multi-jurisdictional. This is over two times the percentage of multi-jurisdictional complaints received in FY 1981. Likewise, our compliance reviews encompass in-depth examinations of a broad range of regulatory requirements and more subtle types of discrimination such as classroom assignment, or incident rates of disciplinary actions. In short, we find that the time frames are often counterproductive in our efforts to resolve cases fairly, within the purview of the law, and, because they thwart our efforts to negotiate voluntary settlements, more cost-effectively.

OCR's efforts to achieve voluntary compliance are required by the civil rights statutes we enforce, and accordingly, form the basis for our compliance program. Not only is this in the best interest of all parties, but we have found our efforts to foster cooperation and avoid needless confrontation to be a most effective tool in obtaining compliance within the strict parameters of the Adams time frames. In this regard, OCR has implemented a number of innovative procedures for improving efficiency of case processing activities.

One such procedure already mentioned, Early Complaint Resolution (ECR), encourages complainants and education institutions to reach a settlement prior to a formal investigation by OCR. In such instances, OCR serves as mediator. ECR, initiated by the former Administration, has been expanded by this Administration and preliminary evaluations support the viability of this approach. Of the 53 cases where mediation was attempted during the first half of FY 1983, a settlement acceptable to both the complainant and the institution was obtained in 44 percent of the cases and in 54 percent of the 24 cases which involved postsecondary institutions. OCR will continue to monitor ECR to insure that the complainants' rights are protected fully and that the settlements are consistent with OCR's regulations.

This Administration also adopted another procedural innovation which allows OCR's regional offices to begin negotiating a remedy with an institution where an investigation has occurred immediately after discrimination is found, rather than wait until a formal letter of findings is sent to the institution. OCR closes these cases with a letter to the institution and the complainant stating OCR's original determination and describing the steps the institution has taken or will take to correct the discrimination. Such techniques save staff time and enable OCR to focus on additional compliance problems.

I am particularly proud of a class action complaint we were able to resolve by this process involving the California Community College System (CCCS). Chairman Edwards (and Congressman Packard), this case resulted in procedures to insure that women and minorities are not subject to discrimination in apprenticeship training programs offered by the CCCS. It is also an excellent example of what can be achieved when State and Federal agencies cooperate to resolve a problem at the local level. Even the NAACP Legal Defense and Education Fund, one of the complainants, commended OCR's work and found the settlement to be "precedent setting."

Technical Assistance (TA) is the third component of OCR's efforts to encourage voluntary compliance. Most TA involves training and on-site consultations designed to develop the problem solving skills of Federal-fund recipients and to resolve issues that hinder compliance. This assistance extends the range of our impact beyond those recipients that are subject to a complaint investigation or compliance review. Moreover, it results in long-term benefits by preventing discriminatory practices, and thereby eliminating the need for costly and time-consuming investigations.

While the Department has strengthened procedures for enlisting the cooperation of recipients, we recognize that voluntary compliance is a goal that cannot always be obtained. When OCR determines that a recipient is in violation of the civil rights statutes and compliance cannot be secured through the voluntary means described, we are fully prepared and will not hesitate to initiate enforcement action. This may be accomplished by instituting administrative procedures to terminate a recipient's eligibility for Federal assistance or by referring the case to the Department of Justice (DOJ) to initiate an action for appropriate injunctive relief in Federal district court.

The effective use of the sanctions authorized by the civil rights statutes will remain a fundamental part of the Department's program to ensure that noncomplying institutions do not receive Federal financial support. During the last two years of the previous Administration, four cases were referred to the Department of Justice for enforcement. During the first two years of this Administration, another four cases -- two in the area of postsecondary education, the higher education system desegregation cases of Alabama and Ohio -- were also referred to the Department of Justice for enforcement. Over these same time periods, OCR also initiated three administrative enforcement proceedings during this Administration, two of which involve Title IX complaints against postsecondary institutions, and three during the past Administration, none of which related to postsecondary institutions.

Your letter of invitation also posed several questions about OCR's activities under specific statutory authorities. Let me respond to those that I haven't already addressed at this point.

TITLE VI

The original 1973 Adams court order required OCR to negotiate plans to eliminate the vestiges of previously segregated systems of higher education with ten States: Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania, and Virginia. Due to subsequent OCR investigations, the number of states subject to the order because their public higher education systems have been found to violate Title VI has increased by eight: Alabama, Ohio, South Carolina, Kentucky, Missouri, Texas, West Virginia, and Delaware. These plans are in various stages of development and implementation, some more successful than others. While I will not spend time discussing them individually, I will report on the monitoring activities the Department has implemented in North Carolina and Louisiana and comment on OCR's processing of State desegregation plans.

Progress has been made in desegregating the higher education systems of both North Carolina and Louisiana under the consent decrees entered with those States in July and September of 1981. Extensive and highly detailed annual status reports have been filed by both States, and both reports have been closely analyzed -- North Carolina's, by OCR; and Louisiana's by the Department of Justice. To date, both North Carolina and Louisiana have complied with each of their specific commitments, including all of their budget commitments designed to further enhance and improve the traditionally black public colleges in those states. Of particular note is Louisiana's recent Facility Study, developed pursuant to the 1981 decree, which identifies a need for $100 million in new capital construction at its traditionally black public colleges over the next five years. The State college system has committed to request capital construction funds from the legislature in that amount.

The time necessary for OCR to process acceptable state-wide higher education desegregation plans may seem protracted but it is not a result of OCR's lack of responsiveness. Rather, it is due primarily to the nature of the plans themselves. The plans are state-wide in scope, requiring States to conduct extensive internal studies and, in some instances, to redefine the missions of institutions and to develop new academic programs. Inter-institutional cooperation is necessary for the development of plans; this is often impeded by the fact that, in general, governance of higher education in these States is not centralized. The development of these plans requires a considerable amount of time if it is to be done properly.

Upon receipt of the States' submissions, which are frequently complex and voluminous, OCR conducts not only a thorough review of the plans, but also an examination of the situations that the plans address. For example, OCR must determine whether proposals to eliminate inequities in faculty salaries at traditionally black institutions are adequate by evaluating the proposals as related to salary structures at comparable institutions, both traditionally black and traditionally white, within the State. OCR then conducts negotiations with States following review of their submissions to obtain revisions of the proposals so that the plans will be acceptable.

Using Kentucky and Virginia as examples, OCR provisionally accepted Kentucky's plan in January 1982, and in most respects, implementation of the plan began at that time. Provisional acceptance was granted because Kentucky officials had completed substantial portions of the plan and had asserted that it was impossible to complete all the remaining specific steps and make all needed decisions before August 1982. We were convinced that the development of the remaining portions of the plan plans required this amount of time. The Kentucky plan has not yet been accepted because discrete important matters await resolution.

In 1978, Virginia, on the other hand, had its higher education desegregation plan accepted. However, it was being implemented with less than satisfactory results. We negotiated changes to the plan, which were developed in the context of the existing plan. Currently, we are considering proposed changes to the underlying institutional measures for student recruitment, student retention, and employment.

SECTION 504

As mentioned, Section 504 complaints constitute the largest segment of our case load. The total number of Section 504 complaints received in FY 1982 was 836, 45 percent of the total received. The number of these that involved postsecondary institutions was 148, or 18 percent of all Section 504 complaints, and 8 percent of the total complaints received in FY 1982. Of the 1,088 open complaints pending on March 31, 1983, 515 were Section 504 complaints of which 87 involved postsecondary institutions. While OCR does not presently identify the allocation of staff resources by the jurisdictional basis of a complaint, it should be noted that Section 504 complaints comprise 47 percent of OCR's total pending workload. Furthermore, these complaints tend to be more difficult to settle due to complex policy issues, and court decisions which require OCR to treat the cases differently in the various judicial circuits.

An example of the latter is OCR's ability to process employment complaints alleging discrimination against otherwise qualified handicapped persons in federally assisted programs. It is this Administration's position that Section 504 does protect handicapped employees from discrimination, but a series of adverse court decisions repudiated the Department's Section 504 jurisdiction over employment discrimination. Consequently, OCR suspended investigation of complaints in December 1981. OCR modified its position in May 1982 after the Supreme Court in the North Haven case referred to earlier, upheld OCR's Title IX employment jurisdiction -- jurisdiction that parallels that of Section 504. Indeed, two United States Courts of Appeals, in decisions rendered after the Supreme Court's decision, have upheld the Department's jurisdiction over Section 504 employment complaints. We have reactivated suspended Section 504 employment cases where Federal Courts of Appeals have either specifically upheld such coverage or have not addressed the issue. In the meantime, we are pleased that the Supreme Court has agreed to review this issue in the fall when it hears the case, Consolidated Rail Corporation v. LeStrange.

The procedures for an investigation of a Section 504 complaint are the same as those for a Title VI or Title IX complaint. A complaint must be in writing and complete; in other words, it must contain the name of the complainant, address, the institution where the discrimination allegedly occurred, the dates of the alleged discrimination and a brief description of the discriminatory act, before OCR will act upon the complaint (handicapped individuals may have a friend or representative put the complaint in writing). Complaints are investigated by the regional offices and should be addressed to those offices. Of course, if the headquarters office here in Washington, D. C., receives a complaint, it is referred to the appropriate regional office.

Once a complete, written complaint is received, OCR then notifies the complainant that the complaint was received and that OCR intends to investigate the complaint. The recipient is notified that a complaint was received and a data request pertinent to the nature of the complaint, is sent to the institution. OCR analyzes the data returned by the institution and then uses this data to make a compliance determination, or, as is necessary in many cases, uses this information to plan an on-site investigation. The institution is notified of the necessity for on-site investigation and the dates during which the on-site will occur. Upon completion of the on-site investigation, the data is analyzed and findings are developed. A letter of findings is then drafted and sent to the recipient and complainant.

During the course of processing any complaint, OCR must adhere to the time frames under the Adams order in responding to the complaint, initiating the investigation, completing the investigation and issuing a letter of findings. Through this process, OCR had been able to resolve approximately 99 percent of its Section 504 complaints without litigation; and in the last two years, no Section 504 complaint necessitated referral to the Department of Justice for legal action.

TITLE IX

During fiscal years 1981 and 1982, OCR received 347 and closed 474 Title IX complaints and received 185 and closed 318 complaints respectively. The number of postsecondary Title IX complaints received in FY 1981 was 117 and closed was 159. In FY 1982, there were 56 postsecondary Title IX complaint receipts and 133 closures. Forty-five of FY 1981 postsecondary Title IX receipts were employment related as compared to 31 in FY 1982. The number of closures that were employment related was 61 in FY 1981 and 39 in FY 1982. The number of Title IX complaint receipts and closures related to the issue of intercollegiate athletics was 35 and 58 in FY 1981, and 5 and 59 in FY 1982. At the close of FY 1982, the most frequent basis for Title IX complaints in postsecondary institutions, as for all educational systems, was the discriminatory treatment of students, principally in extracurricular activities, especially athletics.

Chairman Simon, in view of hearings you held on Title IX enforcement and the Grove City College case last year, I know you are particularly interested in the development and status of the Department's position on student financial assistance. As was stated at last year's hearing, the Department holds that Guaranteed Student Loans (GSLs) are a form of Federal financial assistance that Congress exempted from the civil rights statutes because Guaranteed Student Loans are what the statutes call "contracts of insurance or guaranty." That view has been incorporated in a Notice of Proposed Rulemaking, which is now being reviewed by the Department of Justice. After it is cleared by Justice and OMB, it will be published for public comment.

GSLs were a relatively minor part of the Grove City College and University of Richmond cases. The predominant question on Federal financial assistance in those cases was whether Pell Grants constitute Federal financial assistance, and this Administration has consistently taken the position that they do. The Department argued this issue successfully in the Third Circuit and expects to argue it when the Supreme Court hears the Grove City case this fall. (Grove City College asked the Supreme Court to review the case; the Supreme Court agreed to hear the case, notwithstanding the Government's argument against further review.) The Supreme Court will not be taking up the GSL issue, because the Court of Appeals did not deal with it.

It is my understanding that there is no disagreement with the Department of Justice on the definition of Federal financial assistance since this Department concluded that GSLs were "contracts of insurance or guaranty" and filed its Third Circuit brief in the Grove City case. The Department's position concerning Richmond in discussions with DOJ had to do with the breadth of the injunction issued in that case, and with whether the prior handling of the case made it a good prospect for appeal. The GSL issue did not come up in those discussions.

Mr. Chairmen, for the benefit of the members of your Subcommittees and staff, I have with me copies of OCR's latest Annual Report which describes in more detail many of the items covered in my testimony.

I believe this Department's civil rights record speaks for itself. We are conducting an effective enforcement program in the area of education that compares favorably, and in many respects, surpasses the efforts of the previous Administration. This has been accomplished with fewer staff suggesting improved management and more efficient use of existing resources. In addition to traditional civil rights enforcement approaches, we have developed and encouraged new and innovative approaches to civil rights enforcement that foster greater communication between education institutions and minorities, women, and the handicapped; and we are utilizing untapped resources, such as State education agencies to assist in the battle against civil rights violations. The Department looks forward to working with your Subcommittees in meeting the challenge of equal educational opportunity. I will be happy to answer questions you may have.

Thank you.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAR 31 1983

The Vice President
The United States Senate
Washington, D.C. 20510

Dear Mr. Vice President:

Pursuant to Section 203(b)(1) of the Department of Education Organization Act, the Assistant Secretary for Civil Rights is required to submit an Annual Report to the Secretary of Education, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights (OCR) and identifying significant civil rights or compliance problems where adequate progress is not being made. This Report covers Fiscal Years 1981 and 1982. I have combined the two years in an effort to ensure that these Reports will be more current (the Report for Fiscal Year 1980 was submitted a little more than one year ago). From this point, OCR will submit an annual report covering each fiscal year no later than the following March 31.

I believe this Report reflects significant accomplishments in civil rights enforcement in education. During the past two fiscal years, OCR has developed a number of procedural innovations which allow for prompt complaint processing, while protecting fully the civil rights of the complainants. I hope you will also note that OCR has significantly increased its compliance review activity and has developed a number of major technical assistances initiatives which encourage recipients to monitor and resolve civil rights problems before being reviewed or investigated by OCR.

The Assistant Secretary is required to provide the Secretary of Education the opportunity to comment on the OCR Annual Report. Secretary Bell has reviewed the OCR Annual Report and does not wish to append comments. In accordance with the requirements of the Deparment of Education Organization Act, I am hereby transmitting the Office for Civil Rights Annual Report for your review.

I appreciate this opportunity to transmit the second OCR Annual Report.

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosure

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAR 31 1983

The Honorable Thomas P. O'Neill
Speaker of the House
of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Pursuant to Section 203(b)(1) of the Department of Education Organization Act, the Assistant Secretary for Civil Rights is required to submit an Annual Report to the Secretary of Education, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights (OCR) and identifying significant civil rights or compliance problems where adequate progress is not being made. This Report covers Fiscal Years 1981 and 1982. I have combined the two years in an effort to ensure that these Reports will be more current (the Report for Fiscal Year 1980 was submitted a little more than one year ago). From this point, OCR will submit an annual report covering each fiscal year no later than the following March 31.

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I appreciate this opportunity to transmit the second OCR Annual Report.

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights

Enclosure

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

OFFICE FOR CIVIL RIGHTS

SECOND ANNUAL REPORT

This report covers Fiscal Years 1981 and 1982

I. EXECUTIVE SUMMARY

This report is submitted pursuant to Section 203 (b)(1) of the Department of Education Organization Act. Under this provision the Office for Civil Rights (OCR) is required to submit an ". . .annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of [OCR] and identifying significant civil rights or compliance problems. . . ." OCR submitted a report covering Fiscal Year 1980 in December, 1981. In an effort to become more current in the provision of this report, OCR has combined reports covering Fiscal Years 1981 and 1982 in this Second Annual Report. From this point, reports will be submitted by March 31 following each fiscal year.

The Office for Civil Rights in the Department of Education (ED) enforces laws that prohibit discrimination on the basis of race, color, national origin, sex, handicap, and age in all programs and institutions that receive funds from the Department. Specifically, these laws are:

-- Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination)

-- Title IX of the Education Amendments of 1972 (prohibiting sex discrimination)

-- Section 504 of the Rehabilitation Act of 1973 (prohibiting handicap discrimination)

-- Age Discrimination Act of 1975 (prohibiting age discrimination)

In addition, OCR helps implement civil rights provisions in several Department programs, particularly the Emergency School Aid Act, the Bilingual Education Act, the Education for All Handicapped Children Act, and the Vocational Education Act, and provides technical assistance to recipients, beneficiaries, the public and other organizations in an attempt to obtain voluntary compliance where appropriate with civil rights laws.

The most important factor influencing OCR operations is the continuing application of a combined consent decree resulting from lawsuits brought by civil rights groups during the past decade, alleging inadequate enforcement of the civil rights laws. Litigation in three cases in the U.S. District Court for the District of Columbia (*Adams v. Califano*, No. 3095-70, *Brown v. Califano*, No. 75-1068, and *WEAL v. Califano*, No. 74-1720) resulted in a 1977 court order, the *Adams* order, which established specific time frames for OCR processing of complaints and compliance reviews. The *Adams* order will be discussed in detail later in this report.

The Department of Education Organization Act clearly signals the importance of civil rights enforcement by providing the Assistant Secretary with a certain degree of independence. OCR has the statutory authority to collect and coordinate the collection of data necessary for its compliance activities, to prepare an annual report to the President and the Congress, to appoint and hire its own staff, and to enter directly into contracts. This express authority did not exist prior to the establishment of the Department of Education. In addition, OCR was given separate appropriation status in Education appropriation bills.

The OCR organization consists of ten regional offices and three major headquarters components. Fiscal year 1981 budget resources included authorization for 1,098 staff and funding in the amount of $46,915,000. Fiscal year 1982 budget resources included authorization for 1,026 staff and funding in the amount of $45,038,000.

OCR's primary enforcement technique is the investigation and resolution of complaints filed under its four principal statutes. All complaints received by OCR must be processed in accordance with the requirements of the Adams Order. In Fiscal Years 1981 and 1982, OCR received 2,887 and 1,[illegible] complaints, respectively, and closed 3,321 and 2,267 complaints, respectively.

Through the use of survey and related data, OCR also selects institutions for compliance reviews where discrimination is most likely to be occurring. Investigation and resolution procedures for compliance reviews are basically the same as for complaints. In Fiscal Year 1981, OCR initiated 138 compliance reviews and closed 205 reviews (including reviews begun in previous years). In Fiscal Year 1982, OCR initiated 208 compliance reviews and closed 240 reviews. Compliance reviews are usually more likely to uncover discrimination because of OCR's targeting system.

OCR attempts to achieve voluntary compliance when discrimination is found using either compliance technique. The Office has initiated specific procedures to encourage voluntary settlements. For complaints, this may occur before an investigation begins through the use of mediation techniques. After an investigation for either complaints or compliance reviews resulting in a finding of discrimination, recipients are offered an opportunity to take corrective actions prior to the issuance of a formal letter of findings. OCR's technical assistance program to ED recipients and beneficiaries is also designed to encourage voluntary compliance with civil rights laws. All of these approaches are discussed in detail in this report.

If efforts to achieve voluntary civil rights compliance fail, OCR initiates enforcement by administrative proceedings before an Administrative Law Judge or by referral to the Department of Justice for initiation of court litigation. Appeals of Administrative Law Judges' decisions by recipients may be taken to a review panel and to the Secretary of Education. ED action is subject to further review by the courts. The ultimate sanction under OCR administrative proceedings for noncompliance with civil rights laws is termination of Federal funds.

During Fiscal Years 1981 and 1982, major compliance initiatives included higher education desegregation, Title IX intercollegiate athletics and vocational education. More recently, OCR has begun to investigate approximately 347 complaints alleging employment discrimination under Title IX. These cases were added to OCR's workload following the Supreme Court's decision in North Haven Board of Education v. Bell which upheld OCR's regulations involving employment discrimination under Title IX.

OCR has undertaken a comprehensive review of its regulations pursuant to Executive Order 12291 which is designed to reduce regulatory burdens Governmentwide. OCR's approach has been to reduce the burden of regulations on recipients without compromising the civil rights of participants in and beneficiaries of the recipients' education programs. This subject is discussed in detail in this report.

Management initiatives designed to increase operating effectiveness and efficiency and to comply with the Adams order and OCR's survey program are also discussed in this report.

II. STATUTORY RESPONSIBILITIES AND FEDERAL CIVIL RIGHTS RELATIONS

A. Statutory Responsibilities

The Office for Civil Rights (OCR) in the Department of Education (ED) is responsible for enforcing four basic Federal civil rights laws prohibiting discrimination in federally assisted programs and activities.

-- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin, 42 U.S.C. Section 2000d et seq. (implementing regulations are at 34 CFR Parts 100, 101);

-- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities, 20 U.S.C. Section 1681 et seq. (implementing regulations are at 34 CFR Part 106);

-- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified handicapped people, 29 U.S.C. Section 794 (implementing regulations are at 34 CFR Part 104); and

-- The Age Discrimination Act of 1975 prohibits discrimination on the basis of age, 42 U.S.C. Section 6101 et seq.

Until FY 1982 OCR enforced the civil rights provisions of the Emergency School Aid Act (ESAA), an annual grant program administered by the Office of Elementary and Secondary Education, ED. Unlike virtually all other grant programs, ESAA contained strict civil rights provisions that had to be satisfied before a grant could be awarded. In fiscal year 1982 the ESAA program was consolidated with a number of other categorical education programs and no longer retains its identity as a separate grant-in-aid program.

In similar fashion, OCR assists the Office of Bilingual Education and Minority Language Affairs in determining which local education agencies are eligible for awards under the Bilingual Education Act (BEA). Eligibility requirements under the BEA are identical to ESAA. Unlike ESAA, however, BEA has retained its separate identity as an education grant-in-aid program.

B. Population Served by Civil Rights Authorities

Civil rights laws extend to a wide range of Federal recipients and beneficiaries. Recipients covered by the civil rights authorities enforced by OCR include 50 State education agencies, 16,000 local education agencies, 3,200 institutions of higher education, 50 State rehabilitation agencies and their subrecipients, as well as other institutions such as libraries and museums which receive Federal funds.

OCR carries out its enforcement responsibilities by investigating complaints filed by individuals and groups, conducting self-initiated compliance reviews of selected institutions, and by providing technical assistance to institutions. Recipients found in violation of the law must be given the opportunity to comply voluntarily. When voluntary compliance is not achieved, OCR initiates an administrative hearing or refers the matter to the Department of Justice. If OCR establishes the existence of discrimination in the administrative hearing, the Secretary can terminate Federal funds to the recipient. Whether or not Federal funds are terminated, recipients have the right to judicial review. Recipients can achieve compliance and have Federal funds reinstated at any point in these proceedings by adopting a corrective action plan meeting statutory and regulatory requirements. (See Section VI, Compliance and Enforcement Program.)

C. Federal Civil Rights Relationships

OCR works closely with other Federal agencies involved in civil rights enforcement, particularly the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC). Executive Order 12250 assigns to the Department of Justice responsibility for coordinating enforcement of Title VI, Title IX, Section 504, and any other Federal law which prohibits discrimination on the grounds of race, color, sex, national origin, handicap or religion in programs conducted or assisted by the Federal Government. The Executive Order establishes a two-tiered system whereby primary enforcement responsibility remains with the compliance agencies while leadership and coordination of responsibility, in areas other than employment, are vested in the Department of Justice. More specifically, the Department of Justice is empowered, after consultation with affected agencies, to oversee the development, coordination and implementation of consistent and effective enforcement regulations, policies and procedures.

Executive Order 12250 requires covered agencies to submit to the Department of Justice (DOJ) plans for implementing their responsibilities under this order. In accordance with this requirement, the Office for Civil Rights submitted an implementation plan for fiscal year 1982 which identified the Office's long- and short-range goals and priorities, and described specific activities to be undertaken to achieve them. The plan also included a description of OCR's mission, authority, program coverage, organization, and staff and budgetary resources. DOJ approved OCR's FY 1982 implementation plan on August 17, 1982. Notice was given in the Federal Register on November 2, 1982 that the implementation plan was available for public review at OCR's ten regional offices and at headquarters. Notably, OCR was the first agency to develop an implementation plan and to publish a notice of its availability.

Under Executive Order 12250, DOJ developed proposed regulations for the implementation of nondiscrimination statutes by all covered agencies. In March 1982, DOJ requested ED to comment on a Notice of Proposed Rulemaking (NPRM) consisting of two subparts -- Subpart A, regulations to coordinate the implementation of all nondiscrimination statutes; and Subpart B, regulations to implement provisions of Section 504 in federally assisted programs. ED submitted comments on Subpart A in April 1982 and on Subpart B in May 1982.

OCR has a similar relationship with the Equal Employment Opportunity Commission (EEOC) under Executive Order 12067 in the employment area. DOJ and EEOC have published a proposed regulation requiring Federal fund granting agencies to refer all complaints of employment discrimination on the basis of race, color, national origin, sex or religion to EEOC for investigation and conciliation. The regulation also provides that complaints filed with agencies other than EEOC will be deemed to be filed under Title VII as well as other civil rights authorities. This procedure is intended to eliminate unnecessary duplicative employment investigations.

The proposed rule provides for two methods for a funding agency, such as this Department, to assign responsibility to EEOC for employment complaints received by the agency. First, if an agency does not have jurisdiction, but EEOC may have jurisdiction, the agency must transfer the complaint to EEOC. Second, the rule provides procedures for the referral to EEOC of complaints of employment discrimination covered by Title VI, Title IX, or similar provisions, if they are also covered by Title VII of the Civil Rights Act of 1964 or the Equal Pay Act of 1963.

The referral of cases is only for the investigative and conciliation stages of the process. The referring agency will maintain enforcement authority and responsibility for issuing letters of findings under Title VI or Title IX if EEOC fails to obtain compliance after its completion of the investigation and conciliation efforts.

OCR will refer complaints to EEOC on a limited basis until it can be determined whether such referrals conflict with orders entered against OCR by the United States District Court for the District of Columbia in Adams v. Bell. (See Section III, Historical Perspective.)

III. HISTORICAL PERSPECTIVE

A. Background

The Civil Rights Act of 1964 was enacted on July 2, 1964. All Federal agencies were required to enforce Title VI of the Civil Rights Act, and issue implementing regulations; however, major responsibility for enforcement was placed with the Department of Justice and with the Department of Health, Education and Welfare (DHEW). During the summer and fall of 1964, the DHEW Civil Rights Compliance Program was initiated. The program was initially operated on a decentralized basis with a small leadership unit in the Office of the Secretary. Major compliance activity was conducted by DHEW program operating agencies. Subsequently, the decentralized mode of administration was reversed at the behest of Congress.

The Office for Civil Rights (OCR) was established as a result of Congressional demand that all DHEW activities under Title VI of the Civil Rights Act of 1964 be consolidated within one operating unit. In May 1967, OCR assumed the functions previously administered by the Office of Education, Public Health Service, the Social Security Administration and the Welfare Administration.

During the late 1960's, OCR's primary activity was the dismantling of racially dual school systems in the South. Hundreds of southern school districts were desegregated, administrative proceedings were initiated against hundreds of other schools, and funds for many were terminated. Most of these school districts returned to compliance status immediately as a result of Federal court orders or voluntary plans negotiated and approved by DHEW. OCR also initiated examination of some school districts in the north during the late 1960's.

With the virtual elimination of the former southern dual school systems in the late 1960's and early 1970's, OCR expanded its Title VI elementary and secondary education compliance program to deal with issues other than student assignment. In large part, the newer compliance issues reflected "second generation" desegregation issues occurring in a number of desegregated school systems in the late 1970's. New compliance reviews were initiated covering issues such as special education, ability grouping, services to children deficient in English speaking ability, student discipline, vocational programs, migrant education and employment discrimination. This also increased the emphasis on developing investigative and legal strategies to substantiate and document discrimination because of the more difficult evidentiary requirements. Also, the newer compliance issues presented more complex policy issues and the need for continued assistance in clarifying the responsibilities of recipients.

During this period, Congress enacted comprehensive prohibitions against sex discrimination (Title IX of the Education Amendments of 1972), handicap discrimination (Section 504 of the Rehabilitation Act of 1973), and age discrimination (Age Discrimination Act of 1975) in federally assisted programs and activities. OCR was assigned responsibility for enforcing these statutes and for determining the civil rights compliance of applicants under the Emergency School Aid Act (enacted in 1972). OCR relinquished responsibility for enforcement of Executive Order 11246, as amended, to the Department of Labor, on October 1, 1978, as a result of a reorganization of Federal equal employment opportunity activities. OCR was also assigned responsibility for enforcing the equal employment requirements of the Public Telecommunications Financing Act of 1978. (This authority now resides with the Department of Health and Human Services.)

B. Litigation Action

In 1970, the NAACP Legal Defense and Educational Fund (LDF) filed suit against DHEW in the United States District Court for the District of Columbia. The case, then called Adams v. Richardson, alleged that DHEW was failing to enforce Title VI in elementary, secondary and higher education in the 17 southern and border states. Plaintiffs sought orders requiring DHEW to process complaints within specified time frames, to complete compliance reviews in progress, and to begin others.

In 1973, the U.S. District Court ruled for the plaintiffs, holding that DHEW was failing to fulfill its responsibilities under Title VI. During the next few years, the court issued a series of orders requiring action on a substantial number of specific cases and ultimately imposing procedural requirements and time frames for the processing of all complaints and compliance reviews. The court issued specific requirements regarding the completion of the agency's higher education desegregation activities (see Section VIII), and required DHEW to review every racially identifiable school.

The LDF filed a second suit against DHEW in 1975, alleging precisely the same failure with respect to elementary and secondary education in the 33 northern and western states. This case was called Brown v. Weinberger. In 1976, the court ruled for the plaintiffs and held that DHEW had failed to fulfill its responsibilities in the north as well. The court imposed time frames on the processing of complaints and the completion of compliance reviews.

Additionally, in 1974, the Women's Equity Action League (WEAL) filed a suit similar to Adams and Brown alleging that DHEW was failing to enforce Title IX of the Education Amendments of 1972 and Executive Order 11246. This case was never resolved on the merits; however, the claim was considered in negotiations and all three cases were settled in a consent order in December 1977.

The basic provisions of the 1977 Adams Consent Order included a requirement that OCR eliminate the backlog of complaints by September 30, 1979, and established time frames for OCR processing of complaints and compliance reviews. Specifically, the Order imposed the following time frames:

a. Complaints -- Within 15 days from the receipt of a complaint, OCR must notify the complainant whether the complaint is complete or incomplete. If complete, the complaint must be investigated and a letter of findings must be issued within 105 days of receipt. In the event a violation is determined, corrective action must be secured within 195 days. If correction action is not secured, then enforcement action (either administrative proceedings or referral to the Department of Justice) must be commenced no later than 225 days after receipt of the complaint. If all activities are carried out on time, these time frames break down as follows: 15 days to notify the complainant, 90 days to investigate, 90 days to seek voluntary compliance, and 30 days to initiate enforcement.

b. Compliance Reviews -- Once a compliance review is initiated, it must be completed and findings issued within 90 days from commencement of the on-site visit to the institution in question. If the finding is that the institution is not in compliance, OCR has 180 days to seek voluntary compliance and 210 days to initiate enforcement. If all activities are carried out on time, these time frames break down as follows: specific findings of compliance or noncompliance within 90 days of commencement of an on-site visit; 90 days to seek voluntary compliance; and 30 days to initiate enforcement.

In order to meet the requirements of the Order, OCR's management and planning functions were strengthened and realigned, including OMB and Congressional authorization of 898 additional staff, and internal OCR reorganization activities in OCR headquarters and within the regional offices.

In addition to imposing time frames in which OCR has been required to carry out its enforcement activities, the Adams litigation required OCR to take specific action concerning specified institutions. Court orders issued in 1973, 1975 and 1977 required initiation of reviews and enforcement against certain named school districts and state systems of higher education. The status of these activities is discussed in Section VIII.

In 1981, the *Adams* plaintiffs filed a contempt motion, alleging that OCR had failed to meet the time frames established by the 1977 consent order. The motion was denied in March 1982 when the court ordered OCR to complete an internal study of compliance with the time frames and to negotiate a proposed new order with the *Adams* plaintiffs. The study was completed in June 1982, and OCR attempted through mid-August to negotiate a joint proposed order. When these negotiations failed, both parties submitted separate proposed orders for review by the court. OCR's basic position is that the 1977 time frames are not realistically attainable due to a number of factors affecting complaint processing times that are beyond OCR's control. Such factors include an inability to obtain from recipients the data necessary to make a finding and the unavailability of witnesses (particularly during summer months).

IV. OCR PROVISIONS IN DEPARTMENT OF EDUCATION ORGANIZATION ACT (Public Law 96-88)

The enactment of Section 203 of the Department of Education Organization Act was the first time that OCR as an entity was given statutory authority. Section 203 resulted from a concern, on the part of civil rights groups, that OCR act in an independent fashion in enforcing civil rights laws. This Section was originally proposed by Representative Benjamin Rosenthal in the 95th Congress and, with two exceptions, was part of the Administration's proposal to the 96th Congress for a Department of Education. The reports issued by the Senate Committee on Governmental Affairs (Report No. 96-49) and the House Committee on Government Operations (Report No. 96-143), accompanying S. 210 and H.R. 2444, emphasize the Federal commitment to ensuring equal educational opportunity and the Department's responsibility for carrying out the civil rights laws effectively.

OCR authorities and provisions, pursuant to Section 203 of the Department of Education Organization Act, provide that:

-- There shall be established an Office for Civil Rights headed by an Assistant Secretary (Executive Level IV) who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary.

-- The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President and the Congress without prior approval of any other office of the Executive Branch. This would summarize compliance and enforcement activities and identify significant problems where adequate progress is not being made. The Secretary will be provided the opportunity to comment on this report.

-- The Assistant Secretary is authorized to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws.

-- The Assistant Secretary for Civil Rights is authorized to select, appoint, and employ such officers and employees including staff attorneys, as may be necessary to carry out the functions of the office.

-- The Assistant Secretary for Civil Rights is authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private organizations and persons to carry out the compliance and enforcement functions of the office.

Elements of these last two authorities are now performed by the Department's Office of Management.

V. ORGANIZATION, STAFFING AND BUDGET

A. Organization

The Assistant Secretary for Civil Rights is responsible for OCR's overall operations and serves as principal advisor to the Secretary on civil rights. In the performance of his major functions the Assistant Secretary:

-- Conducts investigations and negotiations to secure voluntary compliance; evaluates and accepts or rejects corrective action plans; determines whether voluntary compliance can be secured; and conducts administrative enforcement proceedings to secure compliance.

-- Recommends, in conjunction with the ED General Counsel, that cases be referred to the Department of Justice for judicial enforcement.

-- Develops and recommends regulations and policies of general applicability in the area of civil rights.

-- Conducts a program of civil rights technical assistance and assists other Departments offices in developing and implementing plans to meet civil rights objectives.

-- Coordinates information gathering and collects data needed to ensure compliance with Department policies on civil rights.

The OCR organization consists of a headquarters component, with three major functional areas, and ten regional offices. OCR is decentralized with operational activities accomplished primarily within the regional offices and with the headquarters components providing management oversight, legal direction and policy development.

OCR is currently planning an internal reorganization, focusing primarily on headquarters operations. While three major functional areas will be retained, the functions within these areas will be realigned in a more efficient manner. OCR has agreed to transfer some functions to the Department to eliminate duplicative or similar functions within the Department. These functions include automated data processing services and non-program training. The Department's Office of Management will continue to service OCR in the areas of personnel and contracts. OCR will report on its reorganization in the Annual Report for fiscal year 1983.

B. Staffing

Since the beginning of fiscal year 1981, full-time permanent staff on board has decreased from 1,055 to 947 at the end of fiscal year 1982, a decrease of approximately 10 percent. Approximately 24 percent of the total on board staff were located in headquarters and approximately 76 percent were divided among the ten regional offices. Each of the major headquarters components is headed by a Service Director, and each region is headed by a Regional Director. Approximately 449 Equal Opportunity Specialists and 80 attorneys handle the bulk of the investigative and enforcement activities, with emphasis on technical assistance. Direct technical assistance is provided by 53 headquarters and regional employees. The remaining staff provides management oversight and control, and administrative and clerical support. OCR's clerical to professional ratio is about 1 clerk to 9 professionals. Due primarily to factors such as the Department of Education's hiring freeze (imposed in fiscal year 1981), this ratio has increased from 1 to 5 in fiscal year 1980 to the current ratio.

C. Budget

Since the creation of the Department of Education, OCR has been given separate appropriation status by Congress. This separate status underscores Congress' intent that OCR operate with some autonomy. The budget is primarily directed toward support of complaint processing, compliance reviews, and civil rights technical assistance. OCR is not a grant-making agency. Therefore, the budget primarily reflects salaries and expenses, and expenditures associated with surveys and data analysis and technical assistance contracts.

Fiscal Year 1981 budget resources included 1,098 full-time permanent positions and funding in the amount of $46,915,000. This position level was not attained primarily due to the Department's hiring freeze. Technical assistance contracts were awarded in the amount of $4,826,358; consultant services contracts were awarded in the amount of $2,180,895.

Fiscal Year 1982 funding for OCR was $45,038,000 as provided in P.L. 97-161, the Fourth Continuing Resolution which was in effect through September 30, 1982. A full-time permanent staffing level of 1,026 was requested for Fiscal Year 1982. Again, this position level was not attained primarily due to the Department's hiring freeze which continued through FY 1982. Technical assistance contracts were awarded in the amount of $559,600; consultant services contracts were awarded in the amount of $1,181,600.

The amount of funds utilized for technical assistance contracts in Fiscal Year 1982 was substantially less than the amounts allocated for contracts in previous years. In order to ensure that the civil rights technical assistance program continues, OCR has undertaken an initiative to focus the limited technical assistance contract dollars on the development of curriculum materials for use by headquarters and regional technical assistance staff. OCR will continue to give technical assistance to recipients and beneficiaries, but will rely much more extensively on OCR staff, rather than contractors, for the provision of technical assistance.

OFFICE FOR CIVIL RIGHTS

Salaries and Expenses

	Budget Estimate To Congress	House Allowance	Senate Allowance	Appropriation
1973	$11,061,000	$12,618,000	$12,618,000	$12,618,000
1974	14,161,000	15,077,000	15,077,000	15,077,000
1975	15,521,000	16,301,000	16,301,000	16,301,000
1976	18,094,000	18,852,000	18,594,000	18,356,000
1977	21,954,000	23,310,000	23,310,000	23,310,000
1978	42,317,000	30,737,000	30,081,000	30,081,000
1979	42,245,000	43,238,000	43,238,000	44,245,000
1980	45,847,000	45,847,000	45,847,000	45,847,000
1981	46,915,000	46,915,000	1/	46,915,000 1/
1982	49,396,000	47,604,000	46,915,000	45,038,000 2/
1983	44,868,000	44,868,000	44,868,000	44,868,000 3/

1/ The Senate did not enact an appropriations bill for Fiscal Year 1981. Instead, the Congress enacted three continuing resolutions--P.L. 96-369; P.L. 96-536; and P.L. 97-12. OCR lapsed approximately $718,000 at the close of fiscal year 1981.

2/ A final appropriation was not enacted for Fiscal Year 1982. Instead, the Congress enacted four continuing resolutions--P.L. 97-51; P.L. 97-85; P.L. 97-92; and P.L. 97-161. OCR lapsed approximately $676,000 at the close of fiscal year 1982.

3/ This amount is provided by P.L. 97-377 which is in effect through September 30, 1983.

VI. COMPLIANCE AND ENFORCEMENT PROGRAM

A. Complaints

As discussed earlier, the Adams order imposes strict requirements on OCR investigation of complaints. Complaint investigation, however, is a complex process involving a number of specific steps each of which requires precise and accurate decisions.

In the pre-investigative stages, for example, OCR must decide if the communication alleging discrimination constitutes a complaint. Correspondence submitted to the Department of Education is defined as a complaint if it alleges that a person's or group's rights have been violated and it implicitly asks ED to seek correction of the alleged violation.

Within 15 days of receipt of a complaint, OCR must determine if the complaint is complete and is within OCR's jurisdiction, and must acknowledge the complaint. In order for OCR to establish jurisdiction, the basis of the alleged discrimination must be race, color, national origin, sex, handicap or age.

In the pre-investigative stage, OCR must also assess the timeliness of a complaint and determine if the complaint involves other Federal agencies or the courts. A complaint is timely if it is filed within 180 calendar days of the last act of alleged discrimination. An OCR Regional Director can waive the filing requirement for good cause. After the requirements of completeness, jurisdiction, and timeliness are met, OCR must determine if investigative activities are affected by court-imposed legal restrictions or OCR policy resulting from court decisions.

On completion of the pre-investigative processes, OCR begins the actual investigation of the complaint. OCR prepares an investigative plan to ensure that the subsequent investigation (1) focuses on the allegations raised in the complaint and (2) results in a legally supportable conclusion concerning the presence or absence of discrimination.

Under its various enforcement authorities, OCR has the right of complete access to all information needed to determine compliance status on the issues under investigation which is maintained by the recipient. Since OCR, not the recipient, decides the type of information relevant to a determination of compliance, the investigative steps include collecting data and gathering information, often through on-site visits. This ensures that compliance determinations are supported by accurate documentation.

The data that OCR collects are needed in the preparation of an investigative report. The purpose of the investigative report is to present information collected during the investigation, to analyze this information to determine facts relevant to the investigation, to present conclusions and to list recommendations for appropriate action. The OCR investigator must reach a conclusion regarding the substantiation of each allegation. The conclusion of the investigation includes recommendations for issuing a Letter of Findings of compliance or noncompliance, and corrective action for findings of noncompliance. The Letter of Findings notifies the parties of the compliance determination made on each issue. Letters of Findings, which are prepared for all investigations, must be sent no later than 105 days after the receipt of a complete complaint or the completion of an incomplete complaint (in accordance with Adams requirements).

If OCR finds the recipient in violation of one of the regulations it enforces, OCR must attempt to acquire voluntary compliance through negotiations within 195 calendar days after the receipt of the complaint (Adams order). Cases in which voluntary compliance cannot be achieved must be referred for enforcement through administrative hearings or the courts.

If voluntary compliance is achieved, the final stage in the OCR investigation is the monitoring of compliance agreements. Through this method, OCR follows the compliance progress of a recipient who was found in violation of a law under OCR jurisdiction. In effect, OCR determines if a recipient is implementing an approved OCR plan for corrective action and, if so, confirms that implementation of the plan has successfully corrected the violation.

B. Early Complaint Resolution

In an effort to provide complainants and recipients an opportunity to voluntarily resolve complaints, the Office for Civil Rights has adopted an Early Complaint Resolution (ECR) process which is employed prior to the beginning of an investigation. In this process, OCR acts as a neutral mediator and assists complainants and institution representatives in resolving the issues raised in complaints, thereby eliminating the need for an OCR investigation. OCR investigative staff are thus freed for other compliance activities and technical assistance.

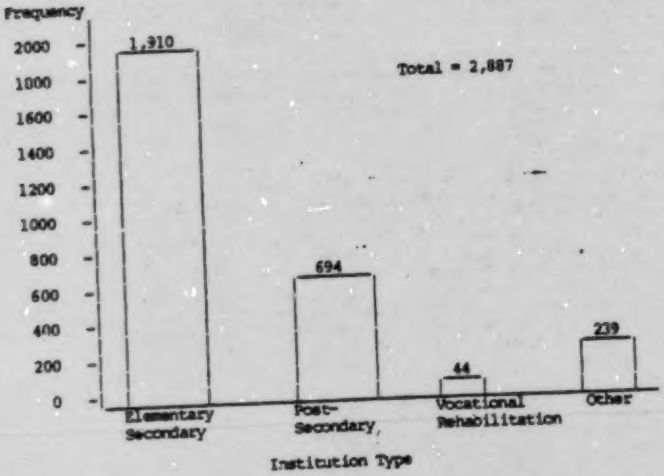
The implementation of Early Complaint Resolution, as an alternative to regular investigation, has progressed in stages over the past two fiscal years. During FY 1981, ECR procedures and operating guidelines were developed. Mediation skill training for regional and headquarters staff was provided in fiscal year 1982. Following the training, the ECR process was officially instituted throughout the regional offices in November 1981. In July and September of 1982, additional mediation skill training was provided to OCR regional staff.

Numerical data is being collected through an automated system on those cases processed using the mediation technique. Initial analyses show that in over half of the cases where ECR was attempted, a voluntary agreement was reached. A supplemental narrative system has also been implemented. The data collected through the two systems will provide material sufficient to describe the general characteristics of those cases processed and trends that may be developing during nationwide implementation. This information will be used to evaluate the process as an alternative to complaint investigations.

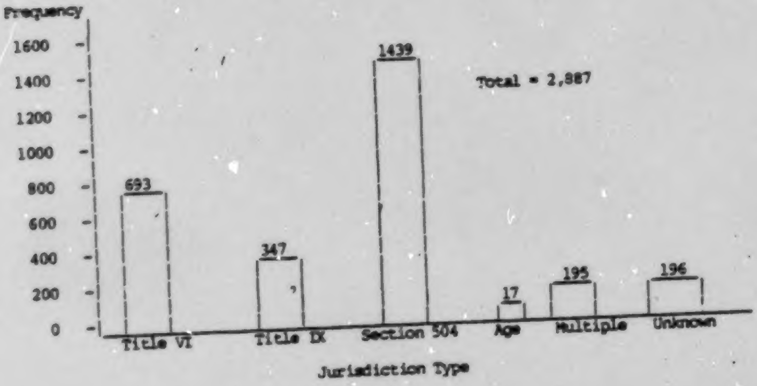
C. Complaint Workload

During fiscal year 1981, OCR received 2,887 complaints. At the close of the year 1,578 complaints were pending, a decrease of 21 percent from the 2,012 complaints pending at the close of fiscal year 1980. In fiscal year 1982, OCR received 1,840 complaints and closed the fiscal year with 1,151 complaints pending, a 27 percent decrease from the complaints pending at the close of fiscal year 1981. The major reason for the reduced complaint workload is the drastic decline in complaint receipts. During fiscal year 1980, OCR received 3,497 complaints. The fiscal year 1982 receipts represent a 47 percent decline from the fiscal year 1980 receipts.

The following tables illustrate OCR complaint receipts and closures for fiscal year 1981 and fiscal year 1982 by jurisdiction and institution type. Note that complaint receipts have declined for all major categories of complaints.

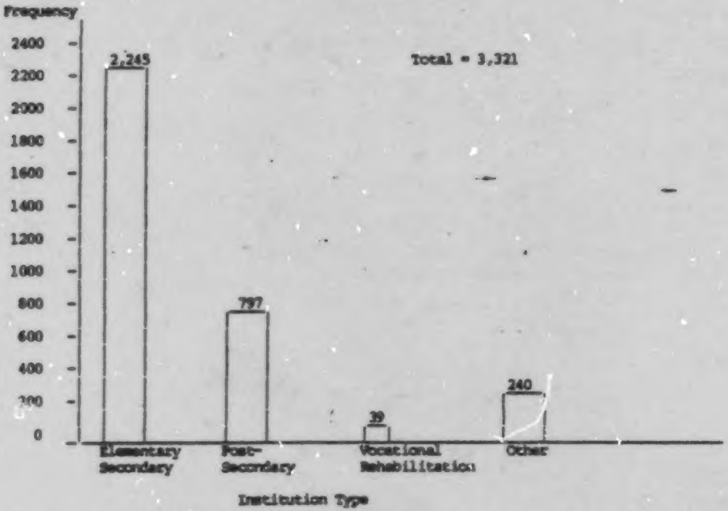


COMPLAINT RECEIPTS BY INSTITUTION TYPE
FISCAL YEAR 1981

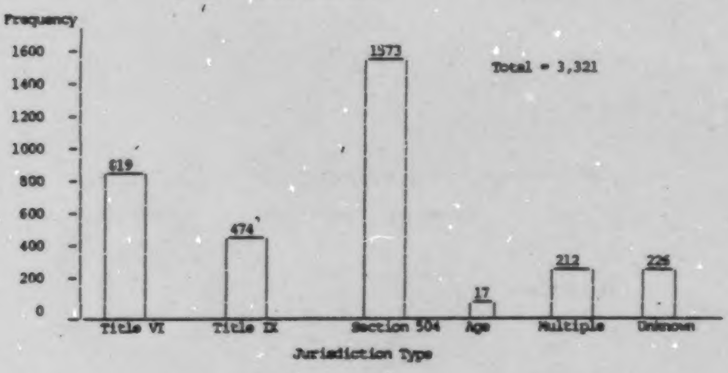


COMPLAINT RECEIPTS BY JURISDICTION
FISCAL YEAR 1981

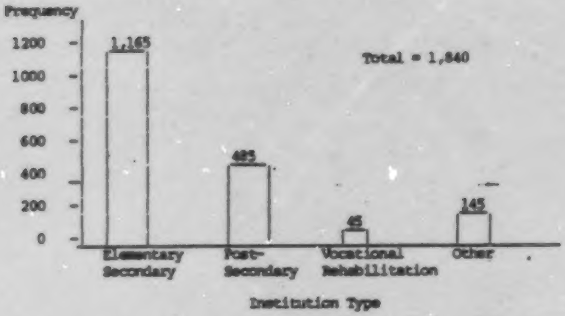
COMPLAINT CLOSURES BY INSTITUTION TYPE
FISCAL YEAR 1981



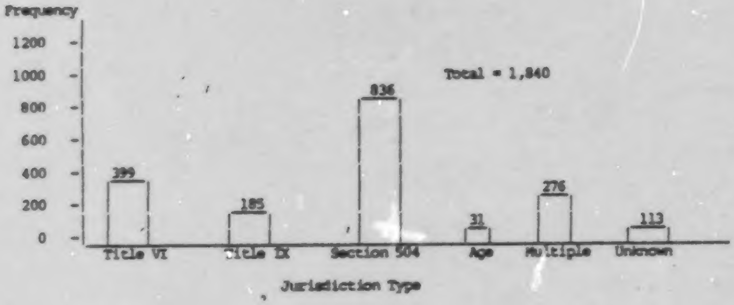
COMPLAINT CLOSURES BY JURISDICTION
FISCAL YEAR 1981



COMPLAINT RECEIPTS BY INSTITUTION TYPE
FISCAL YEAR 1982



COMPLAINT RECEIPTS BY JURISDICTION
FISCAL YEAR 1982



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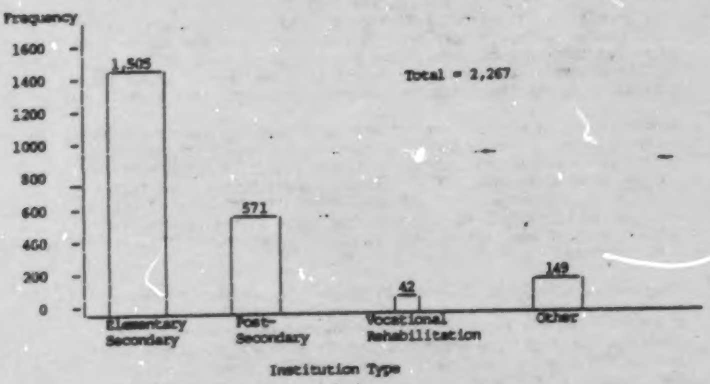
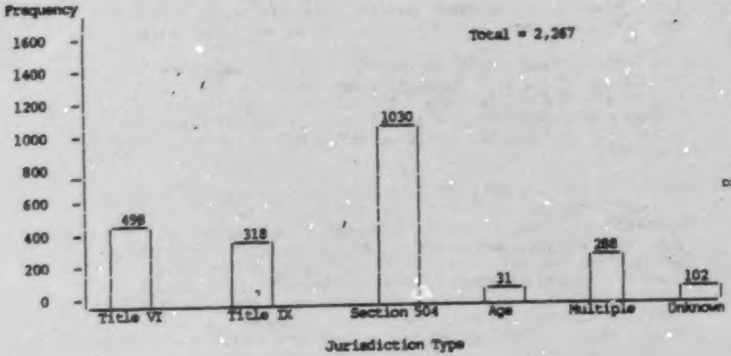
FISCAL YEAR 1982



COMPLAINT CLOSURES BY JURISDICTION
FISCAL YEAR 1982



D. Compliance Reviews

Compliance reviews differ from complaints in that OCR, not a complainant, selects the issues and the institutions for review. This permits OCR to target resources on compliance problems that appear to be serious or national in scope, and that may not be addressed through complaints. The procedures followed in conducting a compliance review are essentially the same as those for complaints in the investigative and post-investigative stages.

Nondiscretionary reviews are activities required by law, regulation, or court order. These reviews include the Emergency School Aid Act (ESAA) pre-grant clearances, *Adams* higher education desegregation and *Lau* plan monitoring. Discretionary compliance reviews represent the only area in which OCR has flexibility in choosing the institution to be covered in compliance reviews, the general subject area of the reviews, and the dates on which the reviews will commence.

The general guidelines OCR uses in determining whether to conduct a compliance review involve several considerations. Initially, OCR identifies the issue areas to be covered in a review and the investigative staff resources assigned to each issue. These steps are set forth on a fiscal year basis in the OCR Annual Operating Plan as part of OCR's objectives and in accordance with the requirements of the *Adams* order. Each region nominates an appropriate number of potential review sites and amount of investigative staff time the region expects to have available for particular issues. Selection of review sites is based on survey data indicating probable compliance problems, and information from OCR complaints, the media, and interested groups and individuals.

Compliance reviews cover broader discrimination issues than complaints and affect significantly larger numbers of individuals than complaint investigations. OCR has found that compliance reviews result in corrective action in 74 percent of cases compared to an approximate corrective action rate of 55 percent for complaints.

During fiscal year 1981, OCR initiated 138 compliance reviews and closed 205 reviews, including some reviews carried over from the previous year. Approximately 75 percent of the reviews were of elementary and secondary schools. Within-school discrimination was the most frequent issue. This included classroom assignment, tracking and ability grouping, physical education, and school athletics. Twenty-five percent of the reviews were of postsecondary education institutions where the primary issues were program accessibility for the handicapped and graduate school admissions.

During fiscal year 1982, OCR initiated 208 compliance reviews and closed 240 reviews, including some carryover reviews. Sixty-one percent of the reviews were of elementary and secondary schools, while 39 per cent were of postsecondary education institutions.

The following tables show the types of compliance reviews that were started and closed for fiscal years 1981 and 1982.

Fiscal Year 1981 Elementary and Secondary Compliance Reviews by Issue Type

ISSUE	STARTS	CLOSURES*
Services to Limited-English-Proficiency Students	3	14
Within School Desegregation	21	34
School Discipline	9	6
Vocational Education	8	18
Special Purpose Schools	9	18
Unserved Special Education	3	0
School Segregation	1	6
Special Title IX	0	1
Joint Review/Within School Discrimination and School Discipline	1	0
Joint Review/Within School Discrimination and Unserved Special Education	2	1
Other	0	3
Total	57	101

Fiscal Year 1981 Elementary and Secondary Compliance Review Starts by Jurisdiction

JURISDICTION	STARTS	CLOSURES*
Title VI	8	37
Title IX	8	5
Section 504	9	8
Multiple	32	51
Total	57	101

* Closure figures include reviews that were started in previous fiscal years.

Fiscal Year 1981 Postsecondary Compliance Reviews by Issue Type

ISSUE	STARTS	CLOSURES*
Program Accessibility	28	38
Graduate and Professional School Admissions	22	33
Intercollegiate Athletics	2	0
Vocational Rehabilitation	2	3
Higher Education Desegregation	0	1
Vocational Education	21	8
Services to Limited-English-Proficiency Students	2	6
Special Title IX	0	9
Joint Review/Program Accessibility and Graduate Admissions	4	4
Other	0	2
Total	81	104

Fiscal Year 1981 Postsecondary Compliance Review Starts by Jurisdiction

JURISDICTION	STARTS	CLOSURES*
Title VI	6	10
Title IX	20	17
Section 504	27	39
Multiple	28	38
Total	81	104

* Closure figures include reviews that were started in previous fiscal years.

Fiscal Year 1982 Elementary and Secondary Compliance Reviews by Issue Type

ISSUE	STARTS	CLOSURES*
Services to Limited-English-Proficiency Students	11	19
Within School Desegregation	54	47
Discrimination	0	7
Vocational Education	23	29
Special Purpose Schools	7	14
Unserved Special Education	28	16
School Segregation	1	5
Special Title IX	0	2
Joint Review/Within School Segregation and Unserved Special Education	1	1
Joint Review/Within School Segregation and Discrimination	0	1
Joint Review/Vocational Education and Unserved Special Education	2	2
Total	127	143

Fiscal Year 1982 Elementary and Secondary Compliance Review Starts by Jurisdiction

JURISDICTION	STARTS	CLOSURES*
Title VI	14	26
Title IX	3	11
Section 504	38	27
Multiple	72	79
Total	127	143

* Closure figures include reviews that were started in previous fiscal years.

Fiscal Year 1982 Postsecondary Compliance Reviews by Issue Type

ISSUE	STARTS	CLOSURES*
Program Accessibility	12	20
Graduate and Professional School Admissions	25	24
Intercollegiate Athletics	0	2
Vocational Rehabilitation	0	1
Higher Education Desegregation	0	3
Postsecondary Vocational Education	28	21
Special Title IX	0	4
Student Services	16	12
Joint Review/Program Accessibility and Graduate Admissions	0	10
Total	81	97

Fiscal Year 1982 Postsecondary Compliance Review Starts by Jurisdiction

JURISDICTION	STARTS	CLOSURES*
Title VI	21	17
Title IX	26	30
Section 504	13	19
Multiple	21	31
Total	81	97

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* Closure figures include reviews that were started in previous fiscal years.

E. Pre-LOF Negotiations

In an effort to improve performance under the Adams time frames and to minimize unnecessary confrontation between OCR and recipients of Federal assistance, OCR implemented a program of encouraging regional offices to seek settlements prior to the issuance of a Letter of Findings (LOF) for both complaints and compliance reviews. Through this process OCR affords institutions an opportunity to resolve any compliance problems found during the investigation before formal LOFs are issued. Draft LOFs are prepared and serve as a basis for OCR's position during negotiations. This new procedure was first used in Fiscal Year 1981 to resolve intercollegiate athletics complaints. After successfully resolving compliance problems found during several investigations, the use of the procedure was expanded in October 1981 to cover complaint investigations and compliance reviews where the law and policy are clear on the issues involved.

A manual data collection system is currently being designed which will record the content and occurrence of pre-LOF settlements for a period of six months. The data will be used to evaluate the pre-LOF settlement process.

F. Administrative Enforcement and Judicial Litigation

When efforts to achieve voluntary compliance fail, the regional office forwards the case to OCR headquarters, which reviews the case and makes specific enforcement recommendations to the Assistant Secretary. If headquarters believes that enforcement proceedings are appropriate, it will initiate enforcement by administrative proceedings before an Administrative Law Judge (ALJ), or by referral to the Department of Justice for initiation of court action.

Where a decision is made to initiate enforcement proceedings, OCR will serve the recipient with a Notice of Opportunity for Hearing which states OCR's allegations and provides the recipient with an opportunity for a hearing before an independent ALJ.

If the ALJ's decision affirms the OCR finding of discrimination, Federal funds may be terminated upon providing 30 days notice of such termination to House and Senate committees with oversight responsibility for the programs whose funds are being terminated. A discretionary appeal may also be considered by the Secretary of Education. In addition, the recipient can seek review of the Department's final decision in Federal court. Some recipients seek Federal court involvement at earlier stages of the proceedings, as in cases where the recipient challenges OCR's jurisdiction over the institution in question.

After Federal funds are terminated, if the recipient believes that it has come into compliance, or adopts a plan it believes will bring it into compliance, it may petition OCR for reinstatement. If OCR denies reinstatement, the recipient is entitled to another hearing on an expedited basis to consider OCR's denial.

Rather than initiate administrative proceedings, OCR may refer a case to the Department of Justice under the following circumstances:

-- A lawsuit is already pending in Federal court dealing with substantially the same issues involved in the OCR investigation.

-- Because of the limited amount or type of assistance received from the Department of Education, it appears that a Federal district court could provide more effective relief.

-- The institution is already operating under an order of a Federal district court that appears to cover the allegation in the complaint filed with OCR. The case is referred to bring OCR's findings to the attention of the court, and if appropriate, to seek modification of the court order.

-- The recipient in question is in violation of Federal law because it is following a conflicting State law. In this situation, OCR would request that the Department of Justice file suit seeking to enjoin enforcement of the State law.

-- It would be necessary for the recipient to transport school children to a school that is not the closest to the children's homes. Congressional action has prohibited OCR from requiring the transportation of students in such circumstances to achieve student desegregation.

Very few investigations result in termination of funds or referral to the Department of Justice. Most cases are voluntarily settled by the institution in question pursuant to OCR's encouragement and guidance.

During fiscal year 1981 and fiscal year 1982, OCR brought administrative enforcement actions against Perry County, Mississippi; Camden County, Georgia; Governor's State University, Illinois; and Chicago State University, Illinois. The enforcement action against Perry County resulted in the termination of funds for the first time since 1972. OCR also determined during FY 1982 that administrative enforcement actions should be brought against Kansas Unified School District #500, Missouri; enforcement proceedings did not commence, however, until FY 1983. Two cases, City of Yonkers, New York, and Phoenix Union High School District, Arizona, were referred to the Department of Justice during fiscal year 1981 and fiscal year 1982.

G. Emergency School Aid Act (ESAA)

ESAA helped school systems meet desegregation requirements by encouraging the voluntary elimination, reduction, and prevention of minority group isolation in elementary and secondary schools.

ESAA applicants, in fiscal year 1981, were required by the statute and implementing regulation to be eligible in two ways before funding could be approved. First, applicants had to have a desegregation plan which qualified under the requirements of the ESAA regulation. Second, applicants had to be in compliance with certain racial/ethnic civil rights related provisions in the Department's ESAA regulation. If an applicant were ineligible because it violated one of these provisions, it could correct the violation and apply to the Secretary for a waiver of ineligibility.

During fiscal year 1981, OCR reviewed the eligibility of 459 applicants for ESAA funds. OCR found 45 applicant school districts ineligible for ESAA funds due to discriminatory practices.

Forty-two of these districts submitted applications for waiver of their ineligibility to which were attached corrective action plans. The Secretary granted 41 of these waiver applications after determining that the plans met legal requirements.

Beginning with fiscal year 1982, the ESAA program was consolidated with a number of other education categorical grant programs, and no longer retains its identity as a separate grant-in-aid program. As a result, OCR no longer reviews school districts for their eligibility prior to the receipt of these funds.

H. Bilingual Education Act (BEA)

The BEA-Desegregation Support Program, operated by the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), issues awards to eligible local educational agencies (LEAs) that are implementing qualifying desegregation plans, and to nonprofit organizations (NPOs) that have received requests for curriculum development from plan eligible LEAs. The purpose of the BEA grants is to develop curricula for, or to implement, bilingual-bicultural education programs to meet the special educational needs of minority group students denied equal educational opportunity because of language barriers. The curricula developed and the instructional programs implemented under the Desegregation Support Program must be designed to complement the LEA's qualifying desegregation plan.

The Secretary of Education has given OCR responsibility for assisting OBEMLA in determining the eligibility of LEA and NPO applicants. Eligibility for BEA grants is governed by the plan and compliance eligibility requirements under the Emergency School Aid Act (ESAA). In order to become plan eligible, an applicant must implement or plan to implement a desegregation plan pursuant to a court or agency order; a plan approved by the Department of Education under Title VI of the Civil Rights Act of 1964; or a voluntary plan for the elimination, reduction, or prevention of minority group isolation.

For compliance eligibility, an applicant must demonstrate that it has not discriminated on the basis of race in several enumerated areas including the hiring and assignment of teachers, assignment of students to classes, and the delivery of equal educational opportunities to limited-English-proficient students. Any applicant found to be compliance ineligible may apply for a waiver of ineligibility to the Secretary in accordance with ESAA procedures. A waiver usually contains a corrective action plan designed to remedy the discriminatory action found. OCR makes recommendations to the Secretary regarding the sufficiency of an applicant's waiver request.

For fiscal year 1981, OCR reviewed the plan and compliance eligibility of 68 LEAs and the plan eligibility of 8 NPOs. Two applicants were found to be plan ineligible and 3 were found to be compliance ineligible.

For fiscal year 1982, OCR reviewed the plan and compliance eligibility of 56 LEAs and the plan eligibility of 6 NPOs. Five LEAs were found to be compliance ineligible. Unlike the ESAA program, the BEA-Desegregation Support Program has remained a separate, identifiable education grant-in-aid program.

I. Enforcement of the Age Discrimination Act

ED regulations implementing the 1975 Age Discrimination Act have been drafted and are currently undergoing intra-Departmental review. Until the regulations are final, OCR will continue to investigate age discrimination complaints under the general governmentwide age discrimination regulations (published by DHEW in 1979). OCR's procedures for investigating an age discrimination complaint, described briefly below, are in accordance with the requirements of the general regulations.

After an age discrimination complaint is received by an OCR regional office and is screened and determined to be within OCR's jurisdiction, it is forwarded to the Federal Mediation and Conciliation Service (FMCS) in Washington for resolution of the complaint by mediation. If FMCS is successful in mediating an agreement between the complainant and recipient, OCR closes the case. If FMCS is unsuccessful, OCR engages in informal fact-finding and then, if necessary, proceeds to formal investigation of the complaint. The formal investigation of an age complaint is conducted in the same way as for all other complaints, except that a complaint alleging age discrimination only is not subject to the Adams time frames.

VII. MAJOR COMPLIANCE AND ENFORCEMENT INITIATIVES

A. State Higher Education Systems

In 1969 and 1970, the Department of Health, Education and Welfare (DHEW) found that 10 states, previously requiring segregation in public higher education institutions by law or other State action, continued to operate institutions that bore the vestiges of racial segregation in violation of Title VI. These states were asked by DHEW to submit statewide desegregation plans. All 10 states either failed to respond or submitted inadequate plans, and DHEW did not initiate enforcement action against them as required by Title VI. As a result of this and the alleged failure to enforce Title VI in other areas, the NAACP Legal Defense and Education Fund brought suit against DHEW. This suit, now styled Adams v. Bell (discussed in Section III), resulted in the series of orders that govern OCR's operations in this area. Due to additional OCR investigations, the number of states subject to these orders, where public higher education systems have been found to violate Title VI has increased to 18.

Prior to FY 1981, Arkansas, Florida, Oklahoma, Virginia, Georgia, and North Carolina (as to its community college system) had submitted acceptable State system desegregation plans. South Carolina, one institution in West Virginia, and three institutions in Missouri submitted acceptable plans in FY 1981. Also in fiscal year 1981, North Carolina, which had been involved in litigation on the issue, agreed to an acceptable plan for its State University system. Louisiana and the U.S. Department of Justice also agreed upon an acceptable plan for its State higher education system in fiscal year 1981. In fiscal year 1982, Delaware submitted an acceptable plan to OCR, and Kentucky submitted a plan that was accepted provisionally. OCR negotiations with Texas and Pennsylvania continued throughout fiscal year 1981 and fiscal year 1982. Although involved in litigation with Maryland over the extent to which OCR may insist on a statewide plan, OCR renewed negotiations with Maryland in an attempt to receive a statewide plan for desegregating the State system of higher education. The Mississippi, Alabama, and Ohio cases were referred for enforcement to the Department of Justice and remain unresolved. (The Alabama and Ohio cases were referred in fiscal year 1982.)

OCR has continued to monitor progress made by states implementing accepted plans. Negotiations with Kentucky, Maryland, Pennsylvania, and Texas have focused on inadequacies OCR has found either in previously accepted plans or in proposed plans.

On January 29, 1982, OCR provisionally accepted a state-wide higher education desegregation plan from Kentucky. Final acceptance was predicated on the completion of a number of programs and activities to be accomplished by August 31, 1982. Kentucky submitted the remainder of its plan at the end of August 1982. As of September 30, 1982, Kentucky's submission remained under review.

In 1974 OCR accepted a plan from Pennsylvania. However, OCR concluded in January 1981 that the plan had not been fully implemented. Pennsylvania submitted a draft supplement to its plan in October 1981 and an addendum to the supplement in February 1982. OCR has found that neither document sufficiently corrected the deficiencies of the 1974 plan.

On January 15, 1981, OCR provisionally accepted a plan from Texas until June 15, 1981, by which time Texas was to complete its desegregation plan. A supplementary plan was submitted on June 15, 1981, but OCR found it to be insufficient. Since that time, Texas and OCR officials have exchanged several documents and have met several times to attempt to develop an acceptable desegregation plan.

On May 15, 1981, OCR issued a letter of findings to the Governor of Ohio concluding that the State was maintaining Central State University as a school for black students and had failed to enhance the institution. The State was asked to develop and submit to OCR a plan for further desegregation and enhancement of Central State. Because of the State's continued refusal to comply with Title VI, notwithstanding efforts by OCR to achieve voluntary compliance, the Assistant Secretary for Civil Rights concluded on February 18, 1982, that voluntary compliance could not be attained and referred the case to the Department of Justice with his request that enforcement litigation be initiated.

In April 1978, OCR informed officials of the State of Alabama that the agency would conduct a statewide review of higher education in Alabama under Title VI. OCR collected information and conducted on-site investigations regarding the senior level higher education institutions in the State. Based upon its investigation, OCR issued a letter of findings to the State on January 7, 1981, finding that Alabama had violated Title VI by failing to eliminate the vestiges of its formerly de jure racially dual system of public higher education at its 16 senior level institutions.

Through 1981, OCR engaged in discussions with Alabama concerning the actions the State should take in order to develop an acceptable plan for desegregation. These discussions failed to produce agreement on a plan acceptable to OCR. Consequently, on January 4, 1982, the Assistant Secretary for Civil Rights concluded that voluntary compliance could not be achieved. The case was referred to the Department of Justice to initiate a lawsuit in Federal court to compel compliance.

The North Carolina State University system settlement remains in litigation. In March 1979, OCR began administrative proceedings against North Carolina. In July 1981, OCR and the State agreed upon a desegregation plan which was filed and approved by the U.S. District Court for the Eastern District of North Carolina as a consent order in settlement of a collateral proceeding filed with that court by the State in an attempt to enjoin the OCR administrative proceeding. The adoption of the desegregation plan also resulted in OCR's moving to dismiss the administrative proceeding. The Adams plaintiffs unsuccessfully attempted to have the North Carolina settlement enjoined in the U.S. District Court for the District of Columbia.

Finally, with regard to the Adams court and higher education system desegregation, the plaintiffs, in May 1982, filed a Motion for Further Relief alleging that OCR was monitoring accepted plans inadequately and failing to employ its own published Criteria in accepting state system desegregation plans.

B. Intercollegiate Athletics

In October 1980, OCR began to resolve long-standing complaints alleging sex discrimination in intercollegiate athletics programs at colleges and universities. Prior to this, OCR had not resolved intercollegiate athletics complaints because of the need for further policy guidance on investigating these types of cases. Guidance was issued in December 1979 and training was conducted beginning in early fiscal year 1981 to prepare regional staff to investigate the complaints. Training was also provided to assist them in analyzing the data collected during investigations and in assessing whether institutions provide students of both sexes with equal educational opportunities in intercollegiate athletics programs.

On April 21, 1981, OCR issued its first intercollegiate athletics letter of findings (LOF) to the University of Akron. The investigation found that the University discriminated against female students in the operation of its athletics programs. In announcing the issuance of this LOF, Secretary Bell stated that this case marked the beginning of a more flexible approach to resolving Title IX civil rights problems found in intercollegiate athletics programs. As discussed in Section VI, using this procedure, OCR emphasized correcting Title IX problems by providing institutions an opportunity to eliminate any inequities found before formal LOFs are issued. OCR has successfully used this technique at numerous postsecondary education institutions.

OCR focused its efforts in fiscal year 1981 and fiscal year 1982 on investigating the accumulated complaints rather than on initiating new compliance reviews. In October 1980, there were 136 open Title IX intercollegiate athletics complaints. Between October 1980 and October 1981, 58 cases were closed. In October 1981, there were 113 open athletics complaints. Between October 1981 and October 1982, 59 cases were closed. Of the 117 cases closed during the two years, 105 were substantive case closures (i.e., a finding was made on the merits of the complaint) of which 86, or

82 percent, were closed with corrective action taken. Twelve cases were administratively closed during this period for reasons such as lack of jurisdiction.

In FY 1982 OCR conducted a review of the December 1979 Policy Interpretation concerning Title IX and intercollegiate athletics. The review project was undertaken at the direction of the Presidential Task Force on Regulatory Relief and resulted in the drafting of a proposed revised Title IX Intercollegiate Athletics Policy Interpretation.

OCR also developed a guide for writing LOFs in Title IX intercollegiate athletics cases for regional staff. The guide is a supplement to OCR's Interim Title IX Intercollegiate Athletics Investigator's Manual. The guide describes the type, scope, and analysis of information that should be included in an LOF. Additionally, OCR provided technical assistance to colleges and universities throughout the country to enhance their ability to prevent and resolve civil rights problems in their athletics programs.

OCR's Title IX jurisdiction over discrimination in intercollegiate athletics was contested by the University of Richmond. The University, like virtually every other educational institution in the country, receives no Federal funds earmarked for athletics. In University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982) the Court found that (1) Federal student aid (e.g., Pell grants) is not "Federal financial assistance" to the University and (2) even if it were "Federal financial assistance," it is not assistance received by what the Court called the "athletics program." The Court concluded that OCR has no jurisdiction to investigate the complaints received, and enjoined OCR from investigating any institution within the judicial district, prior to a showing that the narrowly defined "program or activity" at issue received direct funds excluding student aid. This prohibits OCR from investigating virtually all Title IX intercollegiate athletics cases, as well as many other cases, in the Eastern District of Virginia.

The decision directly affected negotiations with the College of William and Mary regarding problems found in its athletics program. Based on the Richmond decision the College declined to participate in further negotiations with OCR. As a result of the injunction against OCR and the decision of the Department not to appeal the decision, the case was closed without resolution.

C. Vocational Education

OCR continued in fiscal year 1981 and fiscal year 1982 a comprehensive approach in enforcing the civil rights laws as they affect vocational education. Regional compliance staff in the two-year period initiated 56 onsite reviews of secondary and postsecondary facilities operating vocational programs. At the same time, regional staff undertook the oversight of State agency compliance programs required by the Department's *Vocational Education Guidelines*. Issued in 1979, the *Guidelines* hold each State vocational agency responsible for adopting and implementing a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex, or handicap in those vocational education facilities it directly operates, as well as those operated by school systems under its jurisdiction. Authority for requiring State agencies to develop this compliance program is derived from the Federal Regulation issued pursuant to Title VI of the Civil Rights Act of 1964. The Regulation authorizes the Department to require States to submit methods of administration affecting their compliance with the law.

In fiscal year 1981, nearly all States had submitted Methods of Administration (MOAs), and by the close of fiscal year 1982 OCR had received and approved Methods of Administration statements from each of the 50 States and 5 other jurisdictions (e.g., territories) required to submit them. Although the MOA requirement applies only to Title VI, the MOAs of all States but one included provisions for extending their compliance programs to issues covered by Title IX and Section 504. OCR has prepared proposed revisions to the Title IX and Section 504 regulations which would authorize the Department to require States to submit vocational education MOAs relative to compliance with those laws.

During fiscal year 1981, the Assistant Secretary for Civil Rights assigned OCR regional offices the responsibility for reviewing the MOA of each State and evaluating the State's performance as described in the Annual Civil Rights Report submitted on July 1 by each State vocational education agency. All State MOAs have been approved by the Assistant Secretary for Civil Rights on the recommendation of the respective regional office. The MOAs were reviewed for conformity to OCR specifications issued in 1979. Under these specifications, each State was required to show how it would organize its staff and manage its enforcement program. It was required to describe how it would provide for a desk audit review of at least 20 percent of all facilities each year (to identify those in possible noncompliance) and for onsite reviews (at least 5 percent each year) of those facilities that appear to have a high probability of noncompliance. States were not required to investigate complaints.

The 1981 Annual Reports indicated that many State agencies were uncertain as to their responsibilities under the Guidelines and the MOA. As a result, a technical assistance contract was awarded to the American Coalition of Citizens with Disabilities to train State staffs to meet these responsibilities. In 1982, in a series of six three-day training sessions, State staffs were instructed in the most effective procedures for identifying possible noncompliance, conducting reviews and investigations, and providing technical assistance.

A summary of the Annual Reports for 1981 and 1982 showed that in this two-year period, State agency staffs completed more than 5,000 desk audits, conducted more than 1,200 onsite reviews, and sent some 850 letters of findings citing possible noncompliance. (The total number of publicly operated vocational facilities over which State agencies have jurisdiction approximates 11,000.) More than 40 States provided technical assistance to their subrecipients in the form of training and consultation.

In 1983, OCR plans to continue its monitoring and support of State compliance enforcement programs, to increase its investigative activities and to expand its technical assistance to States and subrecipients. In coordination with State agencies, regional offices will continue to conduct onsite compliance reviews in vocational facilities not yet scheduled for review by the States. Technical assistance has been requested by nine State agencies, and will be provided by OCR headquarters staff and OCR's Regional Technical Assistance Staff. Headquarters staff is analyzing the need for a data-collection procedure to furnish regional offices with vocational program enrollment statistics by race/ethnicity, sex and handicap. This data will assist regional and State compliance staff in identifying those vocational facilities that continue to have possible compliance problems.

D. Employment Discrimination

Prior to the Supreme Court's decision in North Haven Board of Education v. Bell, 102 S.Ct. 1912 (1982), several lower courts had concluded that Title IX's prohibition against sex discrimination did not extend to the employment practices of Federal fund recipients. Consequently, those courts invalidated the Department's regulations governing employment discrimination, eventually forcing the Department to suspend enforcement of these regulations pending the Supreme Court's ruling on their validity.

In North Haven, the Supreme Court upheld OCR's jurisdiction over employment pursuant to Subpart E of the Department's Title IX regulations (34 C.F.R. §§ 106.51-61). The Court rejected the argument adopted by some lower courts that simply because Title IX was intended to parallel the general discrimination prohibition of Title VI, the limitation on employment coverage contained in Section 604 of Title VI applied to Title IX. Specifically, the Court held that Title IX did not incorporate the Title VI employment limitation and read the language of Title IX as covering both students and employees. The Court concluded that the term "persons," as used in Section 901 of Title IX, implicitly covered both students and employees and that, unless the legislative history supported a contrary interpretation, the statute must be given its common meaning. The Court carefully analyzed both pre-enactment and post-enactment legislative history of Title IX and found that the legislative history did not warrant disregarding the common meaning of the statutory prohibition.

Shortly after the *North Haven* decision was rendered, the Assistant Secretary for Civil Rights requested that regional offices immediately begin processing Subpart E employment complaints. As a consequence, OCR's caseload has increased significantly. According to the figures compiled by OCR as of November 30, 1982, approximately 1,606 complaints which appeared to have Title IX employment discrimination allegations were screened, and 347 complaints either had been reactivated or merited further consideration.

The *North Haven* decision has had a similar impact on OCR's enforcement of Section 504 employment actions. The Department's employment regulations promulgated under Section 504, which prohibit recipients from discriminating in employment on the basis of handicap, parallel Subpart E of the Title IX regulations. (See Subpart B of the Section 504 regulations, 34 C.F.R. §§ 104.11-104.14.) After several United States Courts of Appeals concluded that Subpart B of the Section 504 regulations was invalid--following an analysis similar to the one used by courts to invalidate Subpart E of the Title IX regulations--OCR suspended enforcement of Subpart B.

The Supreme Court's legal analysis in *North Haven*, which led the Court to uphold the validity of Subpart E, significantly strenghtens the argument supporting the validity of Section 504's parallel regulation. The fact that the general prohibition of Section 504 was intended to parallel Section 601 of Title VI does not necessarily mean that Section 504 was intended to incorporate the Section 604 employment limitation. Indeed, two United States Courts of Appeals have upheld the validity of Subpart B of the Section 504 regulations by applying the premise for statutory interpretation enunciated by the Supreme Court in *North Haven*. (See *Le Strange* v. *Consolidated Rail Corporation*, 687 F.2d 767 (3rd Cir. 1982) *petition for cert. filed* No. 82-862 (U.S., November 22, 1982); *Jones* v. *Metropolitan Atlanta Rapid Transit Authority*, 681 F.2d 1376 (11th Cir. 1982).) Nonetheless, with respect to Section 504, the adverse judicial decisions that were rendered prior to the Supreme Court's decision in *North Haven* remain the law in the circuits in which they were rendered.

With a petition for cartiorari pending in Le Strange, and a split in the circuits on the Section 504 employment issue, it is quite likely that the Supreme Court will grant cartiorari. OCR has, therefore, developed an interim enforcement policy pending a final decision by the Supreme Court on employment coverage under Section 504. OCR has reactivated full enforcement of Subpart B within all jurisdictions in which the controlling United States Court of Appeals has either specifically upheld general employment coverage under Section 504, or not addressed the issue. Where Federal appellate courts have taken a limited view of Section 504's employment coverage, OCR has adopted an interim enforcement policy. This policy limits investigation to complaints where the alleged discrimination arises in a program or activity receiving Federal funds for the purpose of providing employment, or where the alleged employment discrimination might have a discriminatory impact on student beneficiaries. These conditions parallel those imposed by Section 604 of Title VI. As a result of this interim policy, OCR's workload has also increased. OCR figures as of November 30, 1982, indicated that as many as 794 complaints which appeared to contain Section 504 employment allegations were screened to determine whether further investigation or other enforcement activity was appropriate.

VIII. REGULATION REFORM

In February 1981, President Reagan promulgated Executive Order 12291, designed to "reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations." In accordance with the goals of the order, the Office for Civil Rights, in coordination with the Department's Division of Regulations Management, set up a program to manage the review of current regulations, the promulgation of changes in those regulations, and the issuance of any new regulations.

The keystone of OCR's regulations review program has been to reduce the burden of the existing and proposed regulations on recipients without compromising the rights of participants in and beneficiaries of the recipients' programs, and to ensure that those regulations are clearly within the authority delegated by law and are consistent with congressional intent.

The Office for Civil Rights enforces three sets of regulations which prohibit discrimination in programs receiving financial assistance from the Department of Education; on the basis of race, color or national origin (34 C.F.R. Part 100), on the basis of handicap (34 C.F.R. Part 104), and on the basis of sex (34 C.F.R. 106), Title VI of the Civil Rights Act of 1964, Section 504 of the

Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972, respectively. Procedural regulations for formal administrative enforcement activity implement all three statutes (34 C.F.R. Part 101). OCR is also in the process of promulgating regulations covering age discrimination, as required by the Age Discrimination Act of 1975 (see Section VI).

The regulatory review process which begins with OCR's review of a targeted issue and recommendation for or against regulatory change, includes the opportunity for interested persons in the Department to comment, and concludes with review by the Secretary of Education. The Department of Justice, which has coordinating responsibility for civil rights compliance activities under Executive Order 12250, and the Office of Management and Budget, which has regulatory oversight responsibility pursuant to Executive Order 12292, must approve all Notices of Proposed Rulemaking (NPRM) as well as final regulations.

The primary regulatory reform activities undertaken by OCR in Phase I are described below and are classified by the appropriate regulation(s).

Title IX:

- OCR completed a review of the Title IX regulation prohibiting discrimination on the basis of sex in the application of rules of appearance, or dress code. The final regulation revoking the provision was published in the Federal Register on July 28, 1982 and had an effective date of September 17, 1982.
- OCR reviewed the 1979 Title IX Policy Interpretation on Intercollegiate Athletics and has identified provisions that would benefit from clarification. OCR has received substantial intra-departmental comments on the policy interpretation. OCR is considering those comments.
- OCR reviewed the Title IX regulation which specifies the minimal requirements a recipient must meet in issuing an initial notification of its policy of nondiscrimination. OCR prepared an NPRM revoking the requirement for newspaper publication. The NPRM, which has undergone two rounds of intradepartmental clearance, is being reconsidered in light of the comments from other offices.

Section 504:

Pursuant to its responsibility under Executive Order 12250, the Department of Justice is considering the need for new guidelines to assist other Federal agencies in evaluating their current Section 504 regulations. OCR has deferred all regulatory review activity on the substantive provisions of this Department's current Section 504 until the Department of Justice determines whether further guidance to Federal agencies is required or needed. If the Department of Justice provides new guidance, OCR will determine whether the guidance suggests the need for any modification of this Department's current Section 504 regulations.

Title VI:

- OCR is considering a proposal that would serve as a basis for requiring recipient school districts to provide special instruction to national origin group students of no or limited English speaking ability. (The Secretary withdrew a proposed Language-Minority NPRM on February 2, 1981.)

Multiple Regulations:

- OCR, together with the Office of the General Counsel, reviewed the definition of "Federal financial assistance." Proposed amendments to the regulation clarify that the Guaranteed Student Loan Program and the Auxiliary Loans to Assist Students Program fall within the statutory exemption for contracts of insurance or guarantee. The NPRM also would make the definition of the term "Federal financial assistance" consistent in all three regulations. It has been forwarded to the Department of Justice. OCR is awaiting disposition.

- OCR drafted an NPRM to amend the Title IX and Section 504 regulations to include a provision that State agencies offering or administering vocational education programs must include in their applications for continuing Federal financial assistance "methods of administration" that give reasonable assurance that the State agency and its subrecipients will comply with these statutes. OCR has received some intradepartmental comments, but is awaiting all comments to make a complete reply.

Final regulations implementing the Age Discrimination Act of 1975 have been drafted and circulated for comment in the Department. OCR is awaiting the comments from the Office of the General Counsel.

IX. TECHNICAL ASSISTANCE

A. Policy Objectives of Technical Assistance

Technical assistance (TA) is an essential part of the civil rights compliance program. Its purpose is to help recipients of Federal aid to comply voluntarily with the civil rights laws in the most cost-effective manner. Technical assistance has been provided by OCR staff in OCR's ten regional offices and through contracts with private firms and organizations. Most technical assistance activities involve training and on-site consultations designed to resolve issues that hinder voluntary compliance and to develop recipient problem-solving skills.

Technical assistance, therefore, complements compliance activities and extends the range of OCR's interactions beyond those recipients who are covered directly by a complaint investigation or compliance review. In encouraging voluntary compliance, the technical assistance program produces long term benefits to institutions, beneficiaries, and the Federal government by preventing discriminatory practices and thereby eliminating the need for costly and time-consuming investigations.

OCR's technical assistance program takes two forms:

- Assistance related to investigation of a specific complaint or conduct of a compliance review. This includes on-site policy guidance, compliance negotiations, and all other case specific activities normally undertaken by regional office staff in pursuit of what has traditionally been regarded as OCR's enforcement responsibilities. [See discussion of pre-LOF settlement, Early Complaint Resolution and Compliance Monitoring.]

- Assistance not related to the investigation of a particular case or the conduct of a compliance review. This mode includes, but is not limited to, conferences, training workshops, meetings, consultations and responses to inquiries. Such assistance is designed to communicate civil rights compliance information not related to a specific factual context arising from a complaint or compliance review.

In providing the latter type of technical assistance, OCR has utilized its own staff, both in headquarters and the regions, as well as outside contractors.

B. Regional Technical Assistance Program

The major focus of OCR's regional technical assistance program (outside the context of cases or compliance reviews) has been the provision of Section 504 technical assistance to Department of Education recipients. Activities have varied across regions, reflecting unique regional characteristics, priorities and resources.

During fiscal year 1981 and fiscal year 1982, approximately 94,690 people were reached through conferences, on-site visits and workshops given by OCR's regional technical assistance staff. The staff identified costeffective strategies for Section 504 compliance and provided up-to-date policy information, resource materials, and information about related Federal and state legislation affecting the civil rights of protected groups.

The following table reflects the impact and scope of OCR's regional technical assistance staff activities during fiscal year 1981 and fiscal year 1982.

Regional TA accomplishments for fiscal year 1981 and fiscal year 1982 by target population

RESPONSES TO REQUESTS FROM:	FY 1981	FY 1982
ED Recipients	4457	5242
ED Components	459	393
State/Local Governments	2101	1885
Consumers	3490	3310
Federal Agencies	1495	681
Other	1417	488
Totals	13419	11999

During fiscal year 1983 regional technical assistance will extend to the area of non-case specific technical assistance to include all regions in the provision of technical assistance under Title IX and Title VI, as well as specialized TA training and research to support regional compliance operations.

C. Technical Assistance Contracts

OCR also administered a number of technical assistance contracts. Although OCR's technical assistance contract budget had been sharply reduced (FY 1980 = $8,700,000, FY 1981 = $5,248,289, FY 1982 = $559,522), OCR was able to extend its technical assistance contract program during FY 1981 beyond Section 504 to include Title VI and Title IX issues.

Contract program issues are selected on the basis of OCR's Annual Operating Plan, past contract efforts, recommendations by OCR and ED staff, and analysis of complaint workload data. The following issues were addressed through the use of FY 1981 funds.

- Higher Education Desegregation. In states that had desegregation plans accepted by OCR, the contractor developed and implemented technical assistance projects to help state higher education officials implement the plans. The technical assistance included on-site interactions.
- Prevention of Student Sexual Harassment. The contractor presented ten workshops and prepared a brochure for institutions of higher education which explained sexual harassment under Title IX of the Education Amendments of 1972.
- Role of Elected Officials in Implementing Section 504. Section 504 technical assistance workshops were held for mayors and county officials in each of the ten ED regions; 500 person days of follow-up technical assistance were provided on Section 504 implementation.
- Equal Opportunity in Vocational Education. Training and technical assistance was provided to 120 State Education Agency officials in order to assist them in administering Section II-B (oversight responsibilities) of the OCR Vocational Education Guidelines. An additional objective of this procurement was the development of a technical-assistance manual to assist the SEAs in complying with the requirements of the Guidelines.
- Role of Beneficiaries in Helping Recipients Comply with Section 504. Under this contract, disabled citizens were informed of their rights and responsibilities under Section 504 to enable them to assist recipients in achieving voluntary compliance. Over 3000 disabled persons, parents of disabled students, and representatives of disabled persons in ED's ten regions were also trained.
- Technical Assistance to Higher Education Institutions on the Retention of Black Students. Technical assistance was provided to predominantly white institutions on the retention of black students. In addition, a total of 800 participants were trained in ten regional workshops and follow-up technical assistance was provided to administrators and staff in higher education institutions, to increase the institutions' ability to retain and graduate black students.

- Publicizing Parent Information Centers and Issues Affecting the Education of Handicapped Children and Youth. The contractor was required to develop radio and television announcements to explain the special problems facing handicapped students; to help parent information centers for handicapped children to convey information regarding the education of handicapped students to various groups; and to develop print ads for media managers for use in educating the general public to the special problems facing handicapped children.

- Access Center. The center provided a specialized technical information and assistance resource to ED and other federally funded recipients, on cost effective approaches to the removal of architectural barriers when necessitated by Section 504.

SUMMARY OF FY 1981 TECHNICAL ASSISTANCE CONTRACT ACTIVITIES

		Recipients	Beneficiaries	Total
Training Workshops	Title VI -	$522,288		$ 522,288
	Title IX -	529,058		529,058
	Section 504 -	855,377	$2,250,214	3,105,591
Direct Technical Assistance		486,599		486,599
Co-funded Interagency Projects		500,000		500,000
Access Center Clearing House		52,753	52,000	104,753
TOTALS		$2,946,075	$2,302,214	$5,248,289

Projects funded with FY 1982 technical assistance resources addressed the following issues:

- Technical Assistance to Local Education Agencies (LEAs) and State Education Agencies (SEAs) on the Overrepresentation of Black Students in Classes for the Educable Mentally Retarded (EMR). The purpose of this contract was to design and conduct a series of 15 workshops for a total of 500 administrators and staff of LEAs and SEAs, and develop a pamphlet on the problem of overrepresentation of black students in classes for the educable mentally retarded. The contractor identified alternative educational practices, analyzed these practices, conducted workshops, and developed and distributed a pamphlet on alternative educational strategies, evaluation and assessment practices.

- The Admission and Recruitment of Minorities to Graduate and Professional Schools. The purpose of this contract was to design and implement a technical assistance plan to provide guidance to graduate and professional schools on the recruitment, admission, and provision of financial assistance to minority students. The contractor conducted ten training workshops for a total of 600 participants and developed a 120 page pamphlet.

SUMMARY OF FY 1982 TECHNICAL ASSISTANCE CONTRACT ACTIVITIES

		Recipients	Beneficiaries	Total
Training Workshops	Title VI -	$518,047	-	$518,047
	Title IX -	21,475		21,475
Materials Distribution		10,000	10,000	20,000
TOTALS		$549,522	$10,000	$559,522
FY 1981		$2,946,075	$2,302,214	$5,248,289
FY 1982		549,522	10,000	559,522
TOTALS FY 1981 AND FY 1982		$3,495,597	$2,312,214	$5,807,811

In fiscal year 1981 and fiscal year 1982, more than 8,651 people received training through OCR contracted workshops. In addition, an estimated 21,628 people were provided training and technical assistance information through follow-up technical assistance activities. Technical assistance informational materials disseminated by OCR were received by approximately 400,000 recipients, beneficiary organizations and others.

D. Management of Technical Assistance Contracts

During fiscal year 1981, OCR developed and implemented a comprehensive work plan to monitor more effectively the implementation and completion of technical assistance contracts. The work plan emphasized an aggressive Project Officer monitoring role and included special guidelines for carrying out required activities as specified in each project's Statement of Work. By the close of fiscal year 1982 these efforts had resulted in a savings to the government of approximately $393,500.

These contract cost reductions resulted from OCR Project Officers':

- close work and frequent contact with the contractors' project managers, which eliminated potential problems and costly delays;
- termination of activities not achieving their intended objectives;
- vigilant attention to all direct and indirect charges billed on vouchers, to ensure the accuracy, reasonableness, and appropriateness of each item, as well as to correct computational errors; and
- constant encouragement to contractors to use the most cost-effective methods and logistical planning, such as "super-saver" coach airfares, and moderation in hotel room, food, and ground transportation conference costs.

In addition, staff developed and implemented a contractor evaluation procedure, which enables contract monitoring staff to assess the overall performance of each contract on a step-by-step basis. The information resulting from this procedure was helpful in ensuring high quality performance and has also been helpful during the contract proposal technical evaluation and award processes.

E. Technical Assistance Activities with Other Parts of the Department

OCR also worked closely with selected program offices within the Department on the civil rights implications of their program activities. To increase the exchange of information and coordination with other technical assistance programs in the Department, OCR met several times with the Title IV civil rights training and technical assistance program and with the National Diffusion Network. (The Title IV program has assisted school districts implementing desegregation plans, by providing grants to the districts themselves for technical assistance and training, as well as to State education agencies and training institutes. The National Diffusion Network publicizes exemplary educational programs and awards dissemination grants to program developers and to State facilitators to help educators identify and adopt exemplary programs.) An important emphasis in these meetings was an attempt to identify model educational programs that could be used to support civil rights compliance objectives.

Another form of intradepartmental coordination OCR carried out in fiscal year 1981 and fiscal year 1982 was to conduct joint activities under memoranda of understanding with the Office of Special Education and Rehabilitative Services (OSERS) and with the Office of Vocational and Adult Education (OVAE). With OSERS, under an

OCR funded and jointly managed contract, workshops were conducted for OCR and OSERS staff, school district superintendents, special education coordinators, and the staff of Regional Resource Centers funded under P.L. 94-142. The workshops explained how a number of local educational agencies had implemented administrative options for placing handicapped students in the least restrictive environment.

With OVAE, OCR's activities centered on implementing OCR's Vocational Education Guidelines. OCR and OVAE developed and disseminated procedures to help State vocational education agencies develop and implement methods of administration-(MOAs) to carry out the Guidelines. OVAE then helped OCR review and approve the State MOAs. In addition, under an OCR technical assistance contract, State agency staff were trained to develop effective oversight skills to meet their responsibilities: to select local vocational education agencies and schools for review; to conduct on-site reviews; to negotiate and monitor compliance agreements; and to develop and implement a technical assistance program for the Guidelines.

Further, during fiscal year 1981 and fiscal year 1982, OCR reviewed and commented on 285 program regulations for their civil rights implications; served on a Departmental task force to prepare for the Vocational Education Act reauthorization; coordinated the delivery of its technical assistance with the Title IV program; and consulted with the Women's Educational Equity Act Program and the Department's Special Concerns Staff on issues of mutual interest.

X. MAJOR PROGRAM MANAGEMENT INITIATIVES

The complex nature of OCR's enforcement responsibilities requires the development and implementation of sophisticated management systems to ensure that program and policy objectives are met in a manner that is cost-effective and protects the rights of minorities, women, the handicapped, and the aged. Simultaneously, unreasonable burdens must not be imposed on educational institutions that receive Federal funds. The *Adams* order imposes additional requirements that necessitate constant monitoring and extensive reporting to the court and the plaintiffs.

Current management initiatives include:

A. Management by Objectives (MBO) Program

This program was designed to provide management with the capability of tracking significant OCR activities. Quarterly reports and reviews measure progress in meeting key organizational priorities. These priorities are continuously reviewed by the Assistant Secretary and updated as needed.

B. Quality Assurance Program

This program provides a systematic method for measuring the quality of investigative performance through a continuous assessment of randomly selected case files. Quality indices are generated, numerical measures of relative strengths and weaknesses of individual cases are analyzed, causes of demonstrated performance deficiencies are evaluated, and recommendations are offered for remedial action and for improvements in case processing. Recommendations may include development, modification and clarification of substantive policies, procedures, directives and training programs. The OCR Investigative Procedures Manual was revised during 1980, and training was conducted for all investigators in the procedures for quality review of case files. In the near future, OCR will extend its quality assurance program to such areas as the delivery of technical assistance to recipients and the development of policy.

C. Investigator Reference Materials System

The Investigator Reference Materials System (INREFMAT) project was initiated during FY 1982 as a management initiative aimed at improving the organization and maintenance of reference and information materials covering OCR's compliance activities. These materials will be made available to regional staff engaged in compliance-related activities. INREFMAT is expected to improve the consistency and quality of work products by ensuring that all staff use identical source documents and guidance materials.

The project addresses 23 investigative categories which encompass virtually all areas of possible discriminatory practices. Priority rankings were established by regional managers and six categories were established in fiscal year 1982. Five of the categories were completed in draft and will be finalized in fiscal year 1983. The categories dealt with the program assignment of students with physical or mental impairments; the general program assignment of students within schools; the program assignment of students whose primary language is one other than English; the administration of student discipline, awards and honors; and program services for students with physical and mental impairments. The OCR plans to develop additional program categories during fiscal year 1983 in accordance with established priorities.

D. Program Training

During the past several years, complaints of alleged discrimination have been filed involving increasingly complex educational program areas, for example, appropriate education for learning disabled children, program accessibility for handicapped. OCR must ensure that field investigators are knowledgeable about these new program areas, and clearly understand the legal and policy parameters which govern and limit the authority of the Federal Government. Such a focus is crucial to protecting the rights of complainants as well as recipient educational institutions.

Training needs are identified through the management review process and the quality assurance program. This training addresses employee skill development and improvement as well as the specific programmatic subject areas noted above. OCR conducted a comprehensive training needs survey in fiscal year 1981 to determine the extent of training needs for OCR staff. Training needs were then prioritized based on the survey.

During fiscal year 1981, OCR presented 20 training sessions to 627 OCR participants. These sessions included subject matter courses for Title IX intercollegiate athletics, administration of the Emergency School Aid Act, program accessibility under Section 504, basic complaint investigations, investigative report and letter of findings drafting, data sources and analysis, and reviews of student assignment within schools.

On March 1, 1982, OCR relinquished use of the central training facility (in Denver, Colorado) which had been operating since 1977. OCR determined that the facility was no longer the most cost-effective means of meeting training needs. In earlier years

OCR's field organization was comprised largely of newly hired investigators. These employees have now received training and, in addition, have had on-the-job experience. The cost of travel and staff time away from the regional offices no longer justifies maintaining such a facility. Existing program training courses were reviewed and revised where appropriate to accommodate training through self-study courses and/or courses which can be facilitated by regional office personnel on-site. Additionally, OCR developed and presented ten training sessions during fiscal year 1982 to 219 OCR participants. These sessions included subject matter courses in early complaint resolution, quality assurance training, a Title IX survey course, investigative report and letter of findings drafting, and mediation skills training.

E. Management Information Systems

For program review, evaluation, and reporting purposes, OCR regional offices must generate a large amount of data describing the work performed by investigative staff. In an effort to streamline OCR data systems (including an automated case tracking and description system, a work measurement system, and a system for tracking cases referred to headquarters) and to reduce the data reporting burden on OCR regional offices, OCR has reorganized its internal data collection activities so that one organization component has responsibility for collecting, maintaining and analyzing all management data. A quarterly report is prepared for the Assistant Secretary highlighting regional performance and compliance with the Adams time frames, and evaluating program initiatives such as Early Complaint Resolution and pre-finding negotiations. (See Section VI, Compliance and Enforcement Program.)

The work measurement system initiated in 1979, has been simplified to collect only the data needed for planning and evaluative purposes, specifically the projection of workloads, given existing staff levels, and the monitoring of new program initiatives such as technical assistance. The headquarters tracking system has been merged with the general case tracking and description system. A new system component, covering technical assistance activities, is being developed and will be implemented in the near future.

XI. OCR SURVEYS

The Office for Civil Rights is authorized to require recipients of Federal financial assistance to maintain information necessary to support compliance determinations by the implementing regulations for Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Department of Education Organization Act. The 1977 Adams order requires that OCR collect such information in a biennial survey of elementary and secondary school districts.

The purpose of the survey function is to collect and coordinate data to (1) ensure civil rights compliance in federally funded institutions; (2) determine the extent of civil rights problems associated with minorities, women, the aged, and the handicapped; (3) aid in the identification and selection of compliance review sites; and (4) assist with complaint investigations.

OCR's data collections include the biennial Elementary and Secondary School Civil Rights Survey; the Higher Education Surveys, jointly sponsored with the National Center for Education Statistics; the 1979 Vocational Education Survey; the 1978 Special Purpose Facilities Survey; an annual data collection on New York City schools; and the Reports on Progress in Implementing State Desegregation Plans. These surveys collect, or have collected, data by race/ethnicity, sex, and, in some cases, handicap status.

The scope of the surveys has been broadened over the years as new civil rights laws were passed. The earliest surveys focused on racial/ethnic problems like desegregation and over- or under-representation of minority groups in various programs and activities. The issue areas centered on the provisions of Title VI of the Civil Rights Act of 1964. With the passage of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973, additional issues addressing the concerns of sexual equality and equal treatment of the handicapped were added.

A. Survey Findings

Data from the 1980 survey show that nationally--

- Minority isolation, in general, no longer stems from within-district segregation, but from the demographic characteristics of school districts.
- Blacks continue to be significantly overrepresented in disciplinary actions. While comprising 16.1 percent of the total enrollment, they receive 29.7 percent of all suspensions and 28.6 percent of all corporal punishment.

- Minority students, particularly Blacks, are overrepresented in special education programs in which evaluation criteria are somewhat subjective. Programs for the educable mentally retarded (EMR), considered to have the most subjective evaluation criteria, have the greatest overrepresentation of Blacks (38.8 percent comcompared with a 16.1 percent enrollment).

- Minority groups, other than Asians, tend to be underrepresented in gifted/talented programs. Hispanics represent 8 percent of the total enrollment and 4.7 percent of enrollment in gifted/talented programs; Blacks represent 16.1 percent of total enrollment and 9.1 percent of the enrollment in gifted/talented programs.

- Services to limited-English-proficiency (LEP) students have increased dramatically since 1976. In 1976, 996,653 students were identified by school districts as LEP and 46 percent of them were enrolled in special language services programs. The 1980 data indicates there were 934,966 LEP students and that 89 percent of them were enrolled in special language services programs.

- Thirteen percent of the surveyed schools offering home economics had only single-sex classes, 10 percent had all single-sex industrial arts classes, and 14 percent had all single-sex physical education classes. However, the majority (over 60 percent) of schools have all coed classes, including those listed above.

- According to the 1980 data, 98 percent of the children identified as requiring special education are receiving it. This compares favorably with 1976 data which indicated that only 88 percent of the children identified as requiring special education actually received services.

- Of the 25,592 schools offering EMR programs, 7400 or 29 percent enrolled all of their EMR students in full-time programs. These 7,400 schools enrolled 32 percent of the total national EMR enrollment. Schools with only full-time students in programs for EMR, speech impaired, and orthopedically impaired are suspect in terms of their efforts to mainstream students.

In the field of postsecondary education, the racial/ethnic and sex data that OCR requires is collected by NCES in the Fall Enrollment Survey (most recent available data, 1980) and the Earned Degrees Survey (data available from 1980-1981 academic year).

OCR receives in exchange for funds transferred to NCES data tables and magnetic tapes of the racial/ethnic and sex data. It also receives an attrition study which addresses the rate at which institutions are losing or retaining minority students once admitted.

Some important findings of the most recent postsecondary surveys are:

- Minorities represented 17.4 percent of the 9,215,349 students enrolled in undergraduate programs in 1980; however, they earned only 11.2 percent of the 931,583 Bachelor's degrees awarded in 1981.

- Women represented 51.7 percent of the total undergraduate enrollment in 1980; they earned 49.9 percent of the total degrees granted in 1981.

- Minorities represented 10.2 percent of the 1,094,703 student enrollment in graduate programs in 1980; they earned 8.3 percent of the 32,839 Doctor's degrees and they earned 8.6 percent of the 71,273 First Professional degrees awarded in 1981.

- While women comprised 48.2 percent of the total graduate enrollment (1,094,703) in 1980, they earned only 31.2 percent of the 32,839 Doctor's degrees awarded in 1981 and 26.8 percent of the 71,273 First Professional degrees awarded in 1981.

The Reports on Progress in Implementing State Desegregation Plans are designed to assist OCR in monitoring the progress of 11 states for their compliance with negotiated plans for desegregating institutions of higher education.

The data collected for Survey of a Large School District (NYC) assists the regional office in monitoring the memorandum of understanding between the New York City Board of Education and OCR.

B. Survey Changes and Future Plans

Every attempt is made to design questionnaires imposing the least possible burden on respondents while providing the data necessary for OCR to perform its responsibilities effectively. For each survey cycle, OCR meets semiannually with the Committee on Evaluation and Information Systems (CEIS), of the Council of Chief State School Officers, as representatives of the respondents. As a result of these meetings, the Office of Management and Budget's quest for burden reduction, and careful evaluation by OCR, the questionnaires have been reduced in size and complexity since the 1976 survey, the most comprehensive survey to date.

A number of reductions have been effected in the Elementary and Secondary School Civil Rights Survey. OCR decreased the number of respondents from students with enrollments over 300 to those with enrollments over 1,500. This reduced the survey universe by 2,000 local education agencies.

OCR modified the question on pupil assignment to classrooms, which is used to locate classes that are identifiable by race or sex. It was changed from a sample of all grade levels to grade three only, thus relieving all secondary schools of the need to respond. OCR also modified the reporting categories for the question on the amount of time students spend on special education programs.

The Elementary and Secondary School Civil Rights Survey began as an annual survey in 1967 and became biennial in 1976, the most recent data collection having been conducted in the fall of 1982. Over the period 1978-1982, the universe of school districts with enrollments over 300 (now 1,500) was covered as a three-survey rolling sample.

Mr. SIMON. We thank you very much, Mr. Singleton.

The Honorable William Bradford Reynolds, Assistant Attorney General for Civil Rights with the Department of Justice. Mr. Reynolds.

STATEMENT OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. REYNOLDS. Thank you, Mr. Chairman. I, too, have furnished a statement for the committees and would ask that it be made a part of the record, and I will undertake now to summarize that statement.

Mr. SIMON. Your full statement will be entered in the record.

Mr. REYNOLDS. Mr. Chairman and members of the subcommittees, I welcome the opportunity to discuss with you the efforts of this administration to enforce civil rights statutes in the area of higher education.

The Department of Justice has several responsibilities under laws banning discrimination by institutions of higher learning. The Department has independent litigating authority under two statutes—titles IV and VII of the 1964 Civil Rights Act. Title IV authorizes the Attorney General to bring suit in certain instances to remedy discrimination based on race, color, religion, national origin, or sex in public educational institutions. The Department has used this statute both to attack vestiges of racial discrimination which remain in some higher education systems and to attack sex discrimination. Title VII prohibits discrimination in employment based on race, color, national origin, or sex. The Department of Justice has jurisdiction under title VII over public employers, and has used this jurisdiction to attack discriminatory employment practices by institutions of higher learning. In addition, we have authority under title IX of the 1964 Civil Rights Act, 42 U.S.C. 2000 h-z, to intervene in cases presenting allegations of equal protection clause violations based on race, color, religion, sex, or national origin, and have done so in two cases alleging sex discrimination by colleges.

The Department also has important enforcement authority tied to Federal financial assistance. Title VI of the 1964 Civil Rights Act, title IX of the Education Amendment of 1972, and section 504 of the Rehabilitation Act of 1973 all prohibit various forms of discrimination in federally assisted programs or activities. Funding agencies enforce these statutes by negotiation, administrative fund termination proceedings, and by referral to the Department of Justice for commencement of a suit for injunctive relief.

While the agencies which extend Federal assistance are primarily responsible for insuring that the recipients of that assistance honor the prohibitions of titles VI and IX and section 504, the Department of Justice also has an important role to play. First, we represent the agencies in court challenges to their enforcement of these statutes. Such challenges include appeals from fund termination proceedings, injunctive suits by recipients, and suits by other interested parties. Second, Executive Order 12250 commissions the Department of Justice to coordinate all agencies' efforts to enforce civil rights statutes tied to Federal financial assistance. Third, as mentioned above, we have authority to sue recipients of Federal funds when Federal agencies refer the cases to us.

As my testimony indicates, the Department has done much under these several statutes. We have attacked the vestiges of racial discrimination which exist in the higher education systems of several States. We have vigorously defended the Department of Education's efforts to investigate allegations of sex discrimination in the employment practices of several institutions of higher learning. And while it has been judicially determined that the antidiscrimination funding statutes do not give the Government the authority always to address the entire range of practices of recipients of Federal assistance, they plainly do provide the Government with the ability to reach and eliminate unlawful discrimination in all federally assisted programs or activities. To that end, both through litigation and our coordination efforts under the Executive order, the Justice Department has been, and continues to be, a strong ally in the Federal agencies' persistent efforts to remove discrimination from all funded programs.

Since the categories under which we have jurisdiction are easily severable, I will discuss each separately and try to address some of the specific questions raised in your letter as I address these different subjects.

With respect to title VI, the Department of Education administers most Federal assistance to colleges and universities, and so our litigation in this area depends primarily on the actions of that agency.

When this administration took office, the Department of Justice had title VI litigation pending against the higher education systems of two States—Louisiana and Mississippi. Both had been referred to us by HEW some years ago. Each case alleged that the States had established dual systems of higher education by discriminatorily creating segregated colleges and maintaining them as predominantly white and predominantly black institutions, even after *Brown* v. *Board of Education*. Since such systemic discrimination in the admissions practices, as well as all other phases of college administration, necessarily segregates students on the basis of race in all federally funded campus activities, elimination of discrimination in each federally assisted program or activity requires systemwide relief.

In enforcing title VI we seek to insure quality desegregated higher education. Our goals are twofold: First, to enhance educational offerings at historically black institutions which have suffered terribly from the discriminatory allocation of public resources. Second, to attract both to traditionally black and traditionally white institutions students of the other race. In this endeavor, we envision enhanced education and desegregaton as laudible and complementary aims.

In September 1981, we entered into a consent decree settling the Louisiana higher education case. This decree, copies of which have previously been provided to the committees, embodies the goals just mentioned.

Under the decree, the predominantly white institutions employ a variety of techniques to increase other race enrollments. Consider-

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able emphasis has been placed on programs designed to inform students of available educational opportunities and to recruit other-race students. Developmental or remedial educational programs have been utilized to reduce black attrition rates. Cooperative efforts between geographically proximate institutions is required, including faculty and student exchanges and joint decree programs. These and other measures that we have adopted help to insure equal access for all students, regardless of race, to a quality educational institution of their own choosing.

We have declined, however, to impose racial quotas for students or faculty. As in every field, the goal of nondiscrimination in higher education is paramount. Each individual has a right under the Constitution to be judged on the basis of his or her qualifications, background, skills and talents, and not merely as a member of a particular racial group. Quotas are fundamentally inconsistent with this principle. As a matter of both law and policy, they deserve no place among the arsenal of weapons used to fight the very evil that they perpetuate.

We are presently negotiating with Mississippi officials in an effort to settle that longstanding litigation. Last year, the Department of Education requested us to take enforcement action under title VI against the Alabama and Ohio systems of public higher education. Pursuant to Congress express policy preferring voluntary compliance, we have been actively negotiating with those systems in an effort to remedy constitutional violations.

The Department's litigation with the North Carolina higher education system is styled *North Carolina* v. *HEW*. A few years ago, North Carolina sued HEW to enjoin administrative proceedings the agency had initiated. Following extended negotiations, a comprehensive settlement was reached between the State, its colleges and universities, and the Department of Education. While the Department of Education is better suited to discuss details of that settlement with you, I should note in passing that the North Carolina settlement served in many respects as the model for our higher education settlement in Louisiana and contained a number of the same features that I mentioned just a few minutes ago in connection with the Louisiana consent decree.

With regard to title IX of the Education Amendments of 1972, that provision, as with title VI, is one that requires that we cooperate closely in the enforcement effort with the Department of Education. The principle issue we have addressed is the legal one involving the question of the statute's coverage.

The first major effort of this administration under title IX was the *North Haven* v. *Bell* case. Although the case did not deal directly with higher education, it was a significant title IX case with direct impact on institutions of higher education. In that case, we argued before the Supreme Court that Congress intended to prohibit sex discrimination in employment in any federally assisted education program or activity, whether or not the primary purpose of funding was to aid in the employment of personnel for the financially assisted program. The Court ruled along the lines of our brief, thereby significantly enhancing title IX as a vehicle for addressing sex discrimination in employment in institutions of higher education, as well as other areas affected by title IX.

In fact, prior to the decision in *North Haven*, we had sought Supreme Court review of two higher education cases in which courts enjoined Federal administrative action against Seattle University and the Junior College District of St. Louis. After *North Haven*, those injunctions were lifted.

We have also broadly construed the types of assistance which may subject a recipient to title IX review. We recently filed briefs with the Supreme Court in *Grove City* and *Hillsdale*. In both cases, the colleges contend that because the only Federal aid they receive is student aid, the institutions are not "recipients" of Federal aid and, therefore, are not subject in any way to title IX. We argued successfully in the lower Federal courts in both cases that the college's receipt of Federal student aid put the college in the position of receiving a form of Federal financial assistance within the meaning of title IX. Supreme Court review was sought and the Court granted the college's petition for a writ of certiorari in the *Grove City* case, and briefs are due to be filed by the parties this summer in the Supreme Court in that action.

In addition to discussing the coverage of title IX over employment practices, the *North Haven* decision confirmed that title IX enforcement activities must be "program specific"—that is, they must address discrimination occurring in the specific programs or activities receiving Federal assistance. As a result of that directive from the high court, the Departments of Education and Justice have worked together to bring the enforcement efforts in this area in line with the program-specific requirement. The Department of Education's assurance of compliance regulation, for example, no longer is construed as having application to an institution as a whole, but only to those federally assisted programs at the institution. Moreover, as part of the Justice Department's coordination role under the Federal funding statutes, we are independently analyzing title VI and section 504 coverage in light of *North Haven* and the circuit court decisions both before and after *North Haven* that have interpreted the statutes as being program specific.

In this regard, you have asked that I discuss *University of Richmond* v. *Bell*. There, the university sued the Secretary of Education to enjoin the Department from investigating allegations that the university discriminated against women in its intercollegiate athletic program. The Government counterclaimed that the university's failure to turn over requested information violated title IX and the university's own assurances of compliance that it had signed when it received Federal assistance. The district court enjoined the investigation, holding that no allegation had been made, nor any evidence introduced, to indicate the university's intercollegiate athletic program did in fact receive direct Federal financial assistance, and therefore the Federal Government had no authority under title IX to investigate the allegation of sex discrimination.

Both the Justice Department and the Department of Education carefully reviewed the district court decision and decided not to appeal. As the court noted, the university received only Federal student aid and a Federal library grant. Totally absent from the case was proof, or even a suggestion, that the alleged discrimination affected any specific programs which received Federal financial assistance. This deficiency, in our view, made Federal investigation in this case improper under the standard established in *North Haven* requiring that Federal enforcement of title IX be program specific.

In this regard, it should be noted that Congress did not, in enacting title IX, give the Government unrestricted authority to investigate sex discrimination in educational institutions generally. The plain language of the statute makes this clear. A comparison of section 901 and section 904 shows that the latter provision is institutionwide in scope, in contrast to the program-specific nature of section 901. The Supreme Court relied on this very comparison in its *North Haven* ruling. Morover, the legislative history of title IX reveals that the program-specific limitation was needed in the statute in order to secure passage. The intent of Congress was that the Government assure itself that the action it seeks to investigate under title IX occurs in a federally assisted program or activity before the investigation is undertaken.

As you know, after the Government decided not to appeal the *Richmond* decision, Clarence Pendleton, Jr., Chairman of the Civil Rights Commission, and I exchanged letters discussing the case. In these letters I explained to Mr. Pendleton the basis, in some detail, for the Government's decision not to appeal the *Richmond* case. This determination was, of course, based on the particulars of the litigation and the specific court ruling. It in no way signaled a relaxation of our enforcement commitment under the antidiscrimination statutes covering federally assisted programs or activities. I have furnished to the committees copies of my correspondence with Chairman Pendleton.

In addition, earlier this year, at the request of Secretary Bell, the Civil Rights Division of the Department of Justice, following discussions with the Secretary and members of his staff, and an exchange of enforcement information, prepared a memorandum discussing the impact of *North Haven* on the scope of an agency's investigatory authority under title VI, title IX, and section 504. This memorandum undertakes to deal with the practical implications of the "program specific" limitation in these statutes in some detail. Rather than repeat the contents of the memorandum, I have attached it as a copy to my submitted testimony.

With regard to section 504, the issues presented in the enforcement of that statute are similar, but not always identical, to those presented in the title VI and title IX case. As the statute is drafted, additional questions have frequently arisen regarding, for example, whether a handicapped person is "otherwise qualified" for a particular federally assisted program or activity, or the extent to which the program in question should undergo needed alteration in order to accommodate handicapped participants. Whenever such issues are presented, the Government's responsibility is to see to it that handicapped individuals are afforded the maximum benefit and consideration required by law.

Mr. SIMON. If the Chair could just interrupt for a second, I am going to continue the hearings. Chairman Edwards has gone over and he will come back, and then I will go vote. But we will continue the hearings.

I am sorry, Mr. Reynolds.

Mr. REYNOLDS. I am about through, I think.

Our enforcement of section 504 is necessarily shaped in large measure by court decisions interpreting the statute. The lead case is, of course, *Southeastern Community College* v. *Davis*, involving the Supreme Court's only extensive discussion of section 504. That unanimous decision offers substantial and binding guidance on the manner in which the statute should be enforced. Since the case involved a postsecondary institution its effect on the enforcement of 504 in those institutions is apparent. Moreover, certain of the Court's language plainly has broader implications. Its characterization of section 504 as a nondiscrimination, not an "affirmative action" statute, clearly has general applicability. So, too, does the Court's acknowledgement that a recipient's obligation to accommodate handicapped interests may well not demand program alterations of such magnitude that they would result in an "undue financial and administrative hardship" to the recipient.

It is, of course, one thing to state the general principle; it is quite another to insure its proper application in different factual settings. Our litigation effort has attempted to strike the proper balance that is fully sensitive to the interest of the handicapped complainants, on the one hand, and faithful to the intended reach of the statute on the other. We will continue to look primarily to the courts for guidance in shaping section 504 enforcement, participating where appropriate, in an effort to assist the judiciary in making these difficult decisions of statutory interpretation.

You also asked specifically about our coordination activities under Executive Order 12250. Those activities span the spectrum of Federal assistance statutes, including more than 50 code provisions in addition to titles VI and IX and section 504. In light of this wide-ranging responsibility, our enforcement plans plainly cannot be directed only at institutions of higher learning, but must respond to civil rights offenses of whatever kind or variety in all programs or activities receiving Federal financial assistance.

It is true that our regulatory review efforts have, since 1981, concentrated most heavily on section 504. During the past 18 months, we have approved 10 different agency regulations addressing the requirements of 504 in federally assisted programs.

We also undertook an extensive study of the 504 coordination regulations for federally assisted programs, at the conclusion of which it was decided not to issue a notice of proposed rulemaking soliciting comments on proposed regulatory revisions, but rather to leave in place the existing coordination regulations and seek, where necessary, to obtain clarification through the courts.

At the same time, we have sent to all Federal agencies a prototype regulation for enforcing section 504 in federally conducted programs. We have previously provided the committees a copy of the prototype regulation.

Such guidance was desperately needed since most agencies have yet to issue any regulations in this area, despite the fact that the federally conducted amendment to section 504 was added in 1978. Our hope, and expectation, is that, with the prototype regulation, most executive agencies will be able to publish their own 504 notice of proposed rulemaking for Federal programs in the very near future.

This canvass of our enforcement activities is obviously not intended to be exhaustive. It is, however, representative of the kinds of things we are doing under the several civil rights statutes I have mentioned. As my testimony of a little over 1 week ago before the Subcommittee on Civil and Constitutional Rights substantiated, our record is an impressive one of which we can be proud. It demonstrates an unflagging commitment to ferret out and eliminate unlawful discrimination in all of its ugly forms, wherever it might be found. That is the battle for all of us to fight, together, not separately, if we are to prevail.

Thank you, Mr. Chairman. I will be happy to answer any questions.

[The prepared statement of William Bradford Reynolds follows:]

PREPARED STATEMENT OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. Chairman and Members of the Subcommittees, I welcome the opportunity to discuss this Administration's accomplishments in enforcing the civil rights statutes that apply to higher education.

The Department of Justice has several responsibilities under laws banning discrimination by institutions of higher learning. The Department has independent litigating authority under two statutes, Titles IV and VII of the 1964 Civil Rights Act, 42 U.S.C. 2000d and 2000e. Title IV authorizes the Attorney General to bring suit, in certain instances, to remedy discrimination based on race, color, religion, national origin or sex in public educational institutions. The Department has used this statute both to attack vestiges of racial discrimination which remain in some higher education systems and to attack sex discrimination. Title VII prohibits discrimination in employment based on race, color, national origin or sex. The Department of Justice has jurisdiction under Title VII over public employers, and has used this jurisdiction to attack discriminatory employment practices by institutions of higher learning. In addition, we have authority under Title IX of the 1964 Civil Rights Act, 42 U.S.C. 2000h-2, to intervene in cases presenting allegations of Equal Protection Clause violations based on race, color, religion, sex, or national origin, and have done so in two cases alleging sex discrimination by colleges.

The Department also has important enforcement authority tied to federal financial assistance. Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000c, Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, and Section 504 of the Rehabilitation Act of 1974, 29 U.S.C. 794, all prohibit various forms of discrimination in federally assisted programs or activities. Funding agencies enforce these statutes by negotiation, administrative fund termination proceedings, and by referral to the Department of Justice for commencement of a suit for injunctive relief.

While the agencies which extend federal assistance are primarily responsible for insuring that the recipients of that assistance honor the prohibitions of Titles VI and IX and Section 504, the Department of Justice also has an important role to play. First, we represent the agencies in court challenges to their enforcement of these statutes. Such challenges include appeals from fund termination proceedings, injunctive suits by recipients, and suits by other interested parties. Second, Executive Order 12250 commissions us to coordinate all agencies' efforts to enforce civil rights statutes tied to federal assistance. Third, as mentioned above, we have authority to sue recipients of federal funds when federal agencies refer cases to us.

As my testimony will indicate, the Department has accomplished much under these several statutes. We have attacked the vestiges of racial discrimination which exist in the higher education systems of several states. We have vigorously defended the Department of Education's efforts to investigate allegations of sex discrimination in the employment practices of several institutions of higher learning. And, while it has been judicially determined that the antidiscrimination funding statutes do not give the Government the authority always to address the entire range of practices of recipients of federal assistance, they plainly do provide the Government with the ability to reach and eliminate unlawful discrimination in all federally assisted programs or activities. To that end, both through litigation and our coordination efforts under E.O. 12250, the Justice Department has been, and continues to be, a strong ally in the Federal agencies' persistent efforts to remove discrimination from all funded programs.

Since the categories under which we have jurisdiction are easily severable, I will discuss each separately, and will address the specific questions you raised in your letter as I address each subject.

1. Title VI. As you know, Title VI states:

> No person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Department of Education administers most federal assistance to colleges and universities, and so our litigation in this area depends primarily on actions of that agency.

When this Administration first took office, the Department of Justice had Title VI litigation pending against the higher education systems of two states, Louisiana and Mississippi. Both had been referred to us by HEW some years ago. Each case alleged that the states had established dual systems of higher education by discriminatorily creating segregated colleges and maintaining them as predominantly white and predominantly black institutions even after Brown v. Board of Education. Since such systemic discrimination in the admissions practices, as well as all other phases of college administration, necessarily segregates students on the basis of race in all federally funded campus activities, elimination of discrimination in each federally assisted "program or activity" requires systemwide relief.

In enforcing Title VI we seek to ensure quality desegregated higher education. Our goals are twofold: First, to enhance educational offerings at historically black institutions which have suffered terribly from the discriminatory allocation of public resources. Second, to attract both to traditionally black and traditionally white institutions students of the other race. In this endeavor, enhanced educational quality and desegregation are complementary aims.

In September of 1981, we entered into a consent decree settling the Louisiana higher education case. This decree, copies of which I have previously provided the Committees, embodies the goals just mentioned. For example, at Grambling State University the decree provides for a new school of nursing; for joint degree programs with the LSU Medical Center in the fields of physical therapy, rehabilitation counseling, and medical technology; for masters degree programs in public administration, teaching, social work and criminal justice; and for an M.B.A. degree program in cooperation with Louisiana Tech. Similarly wide-ranging curriculum enhancements were required for the New Orleans and Baton Rouge campuses of Southern University.

The decree also includes a faculty development program designed to improve the quality of instruction at Grambling and Southern. Improvements in existing facilities and the construction of certain new facilities at those predominantly black institutions are mandated under the decree as well. In order to promote funding adequate to meet the operating needs of Grambling and Southern, the decree provides for a review of the state appropriations formula and a special appropriation of $1 million to be used for the general enhancement of those institutions.

Under the decree predominantly white institutions employ a variety of techniques to increase other-race enrollments. Considerable emphasis has been placed on programs designed to inform students of available educational opportunities and to recruit other-race students. Developmental or remedial educational programs have been utilized to reduce black attrition rates. Cooperative efforts between geographically proximate institutions are required, including faculty and student exchanges and joint decree programs. These and other measures that we have adopted help to ensure equal access for all students, regardless of race, to a quality educational institution of their own choosing.

We have declined, however, to impose racial quotas for students or faculty. As in every field, the goal of nondiscrimination in higher education is paramount. Each individual has a right under the Constitution to be judged on the basis of his or her qualifications, background, skills and talents, and not merely as a member of a particular racial group. Quotas are fundamentally inconsistent with this principle. As a matter of both law and policy, they deserve no place among the arsenal of weapons used to fight discrimination -- the very evil they perpetuate.

We are presently negotiating with Mississippi officials in an effort to settle that longstanding litigation. Last year the Department of Education requested us to take enforcement action under Title VI against the Alabama and Ohio systems of public higher education. Pursuant to Congress' express policy preferring voluntary compliance, we have been actively negotiating with those systems in an effort to remedy constitutional violations.

Adams v. Bell, cited in your request, is a suit against the Department of Education. The court's decision requires the Department of Education to enforce Title VI by negotiating with specified states -- including Kentucky and Virginia -- concerning their higher education systems. The Department of Education can better respond to inquiries about the status of these negotiations.

Four attorneys from the Civil Division are assigned to represent the Department of Education in the Adams litigation. The number of attorneys the Civil Rights Division assigns to Title VI higher education cases varies with the complexity of the litigation or negotiations. While on occasion as many as ten attorneys may work on a higher education case, routinely about five attorneys are assigned to them.

Finally, your letter asks about the status of "the consent decree[] in North Carolina (pursuant to P.E. Bazemore, et al. and United States of America, et al. v. Friday)." The Bazemore case is not a higher education case. It addresses employment discrimination by North Carolina's agricultural extension service. Officials of the North Carolina State University were named only because the agricultural extension service is tangentially connected to the state's land grant college program. In any event, while the district court ruled against the Government at the trial level, we are presently pursuing an appeal in the United States Court of Appeals for the Fourth Circuit.

The Department's litigation with the North Carolina higher education system is styled North Carolina v. HEW. A few years ago North Carolina sued HEW to enjoin administrative proceedings the agency had initiated. Following extended negotiations, a comprehensive settlement was reached between the state, its colleges and universities and the Department of Education. While the Department of Education is plainly better suited to discuss details of that settlement with you, I should note in passing that the North Carolina settlement served in many respects as the model for our higher education settlement in Louisiana and contained a number of the same features I described earlier in connection with the Louisiana consent decree. You should also know that the North Carolina federal district court approved the settlement involving that State's higher education institutions. However, a separate challenge filed by the NAACP Legal Defense Fund in the D.C. federal courts -- which was unsuccessful in the district court -- is presently pending in the United States Court of Appeals for the D.C. Circuit.

2. Title IX. Title IX of the Education Amendments of 1972 states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

As with Title VI, our enforcement activity under this provision is necessarily conducted in close cooperation with the

Department of Education. The principal issue we have addressed is the legal one involving the question of the statute's coverage.

The first major effort of this Administration under Title IX was the North Haven v. Bell case. Although the case did not deal directly with higher education, it was a significant Title IX case with direct impact on institutions of higher education. In that case, we argued before the Supreme Court that Congress intended to prohibit sex discrimination in employment in any federally assisted education program or activity, whether or not the primary purpose of funding was to aid in the employment of personnel for the financially assisted program. The Court ruled along the lines of our brief, thereby significantly enhancing Title IX as a vehicle for addressing sex discrimination in employment in institutions of higher education -- as well as other areas affected by Title IX. In fact, prior to the decision in North Haven, we had sought Supreme Court review of two higher education cases in which courts enjoined federal administrative action against Seattle University and the Junior College District of St. Louis. After North Haven, the injunctions were lifted.

We have also broadly construed the types of assistance which may subject a recipient to Title IX review. We recently filed briefs with the Supreme Court in Grove City College v. Bell, No. 82-792, and Hillsdale College v. Department of Education, No. 82-1538. In both cases, the colleges contend that because the only federal aid they receive is student aid, the institutions are not "recipients" of federal aid and therefore are not subject in any way to Title IX. We argued successfully in the lower federal courts in both cases that the college's receipt of federal student aid put the college in the position of receiving a form of federal financial assistance within the meaning of Title IX. Supreme Court review was sought and the Court granted the college's petition for a writ of certiorari in the *Grove City* case; briefs are due to be filed by the parties this summer.

In addition to discussing the coverage of Title IX over employment practices, the *North Haven* decision confirmed that Title IX enforcement activities must be "program specific" -- that is, they must address discrimination occurring in the specific programs or activities receiving federal assistance. As a result of that directive from the High Court, the Departments of Education and Justice have worked together to bring the enforcement efforts in this area in line with the program-specific requirement. Department of Education's Assurance of Compliance regulation, for example, no longer is construed as having application to an institution as a whole, but only to those federally assisted programs at the institution. Moreover, as part of the Justice Department's coordination role under the federal funding statutes, we are independently analyzing Title VI and Section 504 coverage in light of *North Haven* and the circuit court decisions both before and after *North Haven* that have interpreted the statutes as being program-specific.

In this regard, you have asked that I discuss University of Richmond v. Bell. There, the University sued the Secretary of Education to enjoin the Department from investigating allegations that the University discriminated against women in its intercollegiate athletic program. The government counterclaimed that the University's failure to turn over requested information violated Title IX and the University's own assurances of compliance that it signed when it received federal assistance. The district court enjoined the investigation, holding that no allegation had been made, nor any evidence introduced, to indicate the University's intercollegiate athletic program did in fact receive direct federal financial assistance, and therefore the federal government had no authority under Title IX to investigate the allegation of sex discrimination.

Both the Justice Department and the Department of Education carefully reviewed the district court decision and decided not to appeal. As the court noted, the University received only federal student aid and a federal library grant. Totally absent from the case was proof, or even a suggestion, that the alleged discrimination affected any specific programs which received federal financial assistance. This deficiency, in our view, made federal investigation in this case improper under the standard established in North Haven requiring that federal enforcement of Title IX be program specific.

In this connection, it should be noted that Congress did not, in enacting Title IX, give the Government unrestricted authority to investigate sex discrimination in educational institutions generally. The plain language of the statute makes this clear. A comparison of Section 901 and Section 904 shows that the latter provision is institution-wide in scope, in contrast to the program-specific nature of section 901. The Supreme Court relied on this very comparison in its North Haven ruling. Moreover, the legislative history of Title IX reveals that the program-specific limitation was needed in the statute in order to secure passage. The intent of Congress was that the Government assure itself that the action it seeks to investigate under Title IX occurs in a federally assisted program or activity before the investigation is undertaken.

As you may know, after the Government decided not to appeal the Richmond decision, I exchanged letters with the Civil Rights Commission discussing the case. In these letters I explained the basis, in some detail, for the Government's decision not to appeal the Richmond case. This determination was, of course, based on the particulars of the litigation and the specific court ruling. It in no way signaled a relaxation of our enforcement commitment under the anti-discrimination statutes covering federally assisted programs or activities. I have furnished to the Committees copies of this correspondence.

In addition, earlier this year, at the request of Secretary Bell, the Civil Rights Division of the Department of Justice, following discussions with the Secretary and members of his staff, and an exchange of enforcement information, prepared a memorandum discussing the impact of North Haven on the scope of an agency's investigatory authority under Title VI, Title IX, and Section 504. This memorandum undertakes to deal with the practical implications of the "program specific" limitation in these statutes in some detail. Rather than repeat the contents of the memorandum, I have attached a copy to this testimony.

Another sex discrimination case which was pending when we took office was United States v. Massachusetts Maritime Acadamy. That case, in which we alleged that the school refused to admit women as cadets, was filed under Title IV of the 1964 Civil Rights Act, 42 U.S.C. 2000c-6. After we put on our case in the summer of 1982, the court denied defendant's motion to dismiss the case. The court recessed the trial, and has scheduled it to resume on May 31.

3. Section 504. Section 504 states:

> No otherwise qualified handicapped individual in the United States as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

The issues presented in the enforcement of 504 are similar, but not always identical, to those presented in a Title VI or Title IX case. As the statute is drafted, additional questions have frequently arisen regarding, for example, whether a handicapped person is "otherwise qualified" for a particular federally assisted program or activity, or the extent to which the program in question should undergo needed alteration in order to accommodate handicapped participants. Whenever such issues are presented, the Government's responsibility is to see to it that handicapped individuals are afforded the maximum benefit and consideration required by law.

In this regard, our enforcement of Section 504 is necessarily shaped in large measure by court decisions interpreting the statute. The lead case is, of course, Southeastern Community College v. Davis, involving the Supreme Court's only extensive discussion of 504. That unanimous decision offers substantial and binding guidance on the manner in which the statute should be enforced. Since the case involved a post-secondary institution, its effect on the enforcement of 504 in those institutions is apparent. Moreover, certain of the Court's language plainly has broader implications. Its characterization of Section 504 as a nondiscrimination, not an "affirmative action", statute (442 U.S. at 411) clearly has general applicability. So, too, does the Court's acknowledgement that a recipient's obligation to accomodate handicapped interests may well not demand program alterations of such magnitude that they would result in an "undue financial and administrative hardship" to the recipient (442 U.S. at 412).

It is, of course, one thing to state the general principle; it is quite another to insure its proper application in different factual settings. Our litigation effort has attempted to strike the proper balance that is fully sensitive to the interest of the handicapped complainants, on the one hand, and faithful to the intended reach of the statute, on the other hand. To this end, we argued in *Nelson* v. *Thornburgh*, that Section 504 required the provision of a reader for a blind welfare case worker by the State of Pennsylvania. In another case, *Peck* v. *County of Alameda*, we supported reimbursement to a deaf juror of the costs of a sign language interpreter used during the trial in which the juror participated. And more recently, in *Georgia Association of Retarded Citizens* v. *McDaniel*, we advised a federal appeals court that, contrary to some lower court decisions, *Davis* did not require invalidation of the Department of Education's Section 504 regulations dealing with procedural safeguards available to handicapped children receiving an elementary and secondary public education.

On another front, we also filed an *amicus* brief in the Supreme Court in *University of Texas* v. *Camenisch*, No. 80-318, giving implicit recognition to a private right of action under Section 504. In addressing the issue in that case - whether a deaf college student was entitled under 504 to an interpreter - this Administration set out its view that complying with 504 may indeed require expenditures by the recipient of federal assistance, and that interpreter's services are the type of auxiliary needs which colleges covered by 504 could well, in proper circumstances, be compelled to provide. The precise "line drawing" that must take place under Section 504 in such cases will invariably turn on the facts of particular cases, and general pronouncements in this area are thus of little value. We will continue to look primarily to the courts for guidance in shaping Section 504 enforcement, participating where appropriate in an effort to assist the judiciary in making these difficult decision of statutory interpretation.

You also asked specifically about our coordination activities under Executive Order 12250. Those activities span the spectrum of federal assistance statutes, including more than 50 code provisions in addition to Titles VI and IX and Section 504. In light of this wide-ranging responsibility, our enforcement plans plainly cannot be directed only at institutions of higher learning, but must respond to civil rights offenses of whatever kind or variety in all programs or activities receiving federal financial assistance.

It is true that our regulatory review efforts have since 1981 concentrated most heavily on Section 504. During the past 18 months, we have approved 10 different agency regulations addressing the requirements of 504 in federally assisted programs. We also undertook an extensive study of the 504 coordination regulations for federally assisted programs, at the conclusion of which it was decided not to issue a notice of proposed rulemaking soliciting comments on proposed regulatory revisions, but rather to leave in place the existing coordination regulations and seek, where necessary, to obtain clarification through the courts. At the same time, we have sent to all federal agencies a prototype regulation for enforcing Section 504 in federally conducted programs. We have previously provided the Committees a copy of the prototype. Such guidance was desperately needed since most agencies have yet to issue any regulations in this area, despite the fact that the "federally conducted" amendment to Section 504 was added in 1978. Our hope, and expectation, is that, with the prototype regulation, most executive agencies will be able to publish their own 504 NPRM for federal programs in the very near future.

This canvass of our enforcement activities is obviously not intended to be exhaustive. It is, however, representative of the kinds of things we are doing under the several civil rights statutes I have mentioned. As my testimony of a little over one week ago before the Subcommittee on Civil and Constitutional Rights substantiated, our record is an impressive one of which we can be proud. It demonstrates an unflagging commitment to ferret out and eliminate unlawful discrimination in all of its ugly forms, wherever it might be found. That is the battle for all of us to fight -- together, not separately -- if we are to prevail.

Thank you. I will be happy to answer any questions.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1983

The Honorable T. H. Bell
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D. C. 20202

Dear Mr. Secretary:

Enclosed is the Memorandum we discussed concerning investigatory activities of the Department of Education under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). I would be pleased to discuss this matter with you further if you have additional questions following review of the enclosure.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Daniel Oliver
Harry Singleton

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1983

MEMORANDUM

The civil rights statutes, Title VI (42 U.S.C. 2000d), Title IX (20 U.S.C. 1681), and Section 504 (29 U.S.C. 794), provide the Department of Education (hereinafter the "Department") with authority to regulate and investigate recipients of financial aid from the Department on a program-specific basis. Based on the Department's descriptions of its financial assistance programs, it appears that the Department's funding statutes fall into three broad categories: (1) assistance to a specific program of a recipient, as determined by the statute's particularized purpose(s) and the use of the Federal financial assistance by the recipient; (2) general assistance to recipients; and (3) assistance for the construction of facilities. The purpose of this memorandum is to explore programmatic enforcement procedures within each of these categories.

Investigatory Responsibilities

The obvious starting point in the Department's investigatory process is with receipt of an allegation of discrimination, or upon submission of evidence giving rise to a reasonable belief that discrimination is occurring at an institution. In the normal course, it is presumed that the Department can ascertain from its own funding records whether financial assistance is being provided to the purportedly offending institution, and, if so, under what funding program or programs. The enforcement experience of the Civil Rights Division under the various Federal assistance statutes confirms that this basic record information is readily available in most instances and easily ascertainable.

If the challenged institution is not one receiving Federal financial assistance under a Department program, the alleged discriminatory behavior cannot be investigated by the Department's Office of Civil Rights (OCR). This conclusion does not foreclose a private action by the complainant, nor does it immunize the institution from possible investigation by another Federal agency (e.g., Office of Revenue Sharing) if that agency is providing financial assistance.

Assuming Department funding under one or more of its financial assistance programs, OCR's investigatory authority is shaped by the nature, purpose and use of the particular kind of assistance provided to the recipient. It is in this connection that the several categories of funding statutes become important.

A. *Specific Assistance Programs*. A recipient receiving Federal financial assistance under specific, particularized assistance programs of the Department may, under the above civil rights statutes, only be regulated and investigated in those programs. 1/

Examples of the proper approach to enforcement of civil rights protections under these statutes include: a recipient which receives only adult education assistance (20 U.S.C. 1203) may only be regulated and investigated in the operation of its adult education program; a recipient which receives assistance only for its library (e.g. under the College library resources program (20 U.S.C. 1022-24) or the public library services program (20 U.S.C. 352054)) may only be regulated and investigated in the operation of its library; a recipient which receives assistance for its bilingual vocational education program (20 U.S.C. 2411-21) may only be regulated and investigated in the operation of its bilingual vocational education program; a recipient which receives only work study funds (42 U.S.C. 2753) or Pell grant funds (20 U.S.C. 1070a) may only be regulated and investigated in its student financial aid activities. 2/

1/ A recipient receiving Federal financial assistance under more than one program administered by the Department may be regulated and investigated in all such programs.

2/ For a listing of additional specific assistance statutes, see Appendix A, *infra*.

A small number of the specific assistance statutes administered by the Department, while not constituting a general grant in aid to the recipient, do encompass multiple programs or activities of the recipient. In such case, the recipient's application should delineate the specific programs for which Department assistance is being requested, and a presumption thus attaches that all programs so identified in the application do indeed receive federal aid. Unless the Department has independent knowledge that only certain of these programs are receiving Departmental assistance, or a showing is made by the recipient that a listed program is nonfunded -- which would in either event rebut the presumption -- the Department may regulate and investigate all such programs. 3/

B. General Aid Programs.: When the Federal financial assistance that the Department provides is in the form of a general grant or general aid that is not earmarked for particularized programs, all the programs and activities of the recipient fulfilling the broad purposes of the assistance statute are presumed to be covered by the applicable civil rights laws. In order for a recipient in such circumstances to avoid Department investigation of any of its programs, evidence sufficient to rebut the presumption as to that particular program(s) must be forthcoming. Once the Department is satisfied that the identified program(s) does not in fact receive any of the Federal financial assistance going to the recipient in the form of general aid, further investigation in that area is foreclosed as being outside the coverage of the civil rights statutes.

3/ An example of a multiple program assistance statute is 20 U.S.C. 3231, which provides for bilingual education assistance to a school district that may be used for, *inter alia*, elementary and secondary bilingual education programs, adult bilingual education programs, and preschool bilingual education programs, and requires the recipient to list the activities for which it wishes to receive assistance. If a school district lists in its application only elementary and secondary bilingual education programs, the presumption is that they alone receive Federal funds and are subject to Department scrutiny. If, on the other hand, the adult and preschool bilingual education programs are listed on the application as well, then all the listed programs are presumed to be within the coverage of the civil rights statutes, subject to rebuttal only to the extent it can be shown that those programs are in fact not receiving federal funds.

For example, if the Department determines that a local educational agency receives impact aid funds (20 U.S.C. 236-44), the Department may presume that all of the elementary and secondary programs and activities of the school district receive Federal financial assistance. 4/ Therefore, it may regulate and investigate all such programs and activities except to the extent that the recipient demonstrates some of its programs do not receive such funds. A similar analysis obtains for recipients of Federal financial assistance for developing institutions (20 U.S.C. 1051, see 20 U.S.C. 1052(a)(1)(D)). The Department may assert jurisdiction over all academic, administrative, and student service activities of such a recipient under the same rebuttable presumption mentioned above. 5/

C. Construction Programs. The Department also provides construction funds to institutions to assist in the building or renovating of school facilities. In such circumstances, the civil rights Federal funding laws permit the Department to reach discrimination in all of the programs and activities conducted within the wholly or partially funded buildings, whether they were built for athletics or philosophy. The Department administers a number of such construction assistance statutes including those under the federal impact aid program (20 U.S.C. 631; id. 646); Higher Education Act (20 U.S.C. 1132c); and Library Services and Construction Act (20 US.C. 355a).

CONCLUSION

Congress undertook through Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 to reach discrimination based on race, sex and handicap, respectively,

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4/ Other programs conducted by the local educational agency beyond the scope of the broad purposes of the impact aid statute would not be covered.

It should also be noted that Congress did not intend that the termination of Federal financial assistance under general aid programs be wholesale in nature. Only the portion of the general federal aid used in the part of the recipient's programs where discrimination has occurred may be cut-off. This may involve a pro-rata termination of Federal financial assistance if the precise amount of Federal financial assistance involved cannot be determined.

5/ For a listing of other general assistance statutes, see Appendix B, *infra*.

in any program or activity receiving Federal financial assistance. The Supreme Court held in *North Haven Board of Education* v. *Bell*, 50 U.S.L.W. 4501, 4507 (1982), that the program-specific nature of those crosscutting discrimination statutes must be faithfully observed in their implementation and enforcement. 6/

Thus, where, as the court held in *University of Richmond* v. *Bell*, 543 F. Supp. 321 (E.D. Va., 1982), the desired investigation involves a program (*i.e.*, athletics) other than the one (*i.e.*, student financial aid) receiving Federal funds under a specific assistance statute (*i.e.*, Pell Grants), the Department cannot conduct such an investigation without first establishing that the challenged program (*i.e.*, athletics) receives Federal funding. It is only when the institution receives a general Federal grant that the Department can indulge the presumption of comprehensive programmatic coverage for investigatory purposes, subject of course to rebuttal by the recipient as to any program not actually receiving Federal assistance.

One important caveat needs to be added. In the educational arena, particularly, discrimination in an institution's admissions' policy necessarily infects all programs and activities of the college or university. In view of this reality, claims of discrimination in the student admissions area, if reasonably grounded, provide adequate basis for the Department to investigate the admissions program even when it is not funded, so long as any of the institution's other programs or activities receives Federal financial assistance.

We would not expect this analysis to occasion much change in the Department's current investigation practices. To the extent it becomes necessary to better tailor future investigatory efforts to discrete funded programs -- rather than launching a broad-based inquiry of the institution as a whole -- that is a statutory mandate recognized by the U.S. Supreme Court, and we can hardly afford to ignore it.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

6/ To similar effect are: *Dougherty County School System* v. *Bell*, No. 78-3384 (11th Cir., Dec. 20, 1982); *Hillsdale College* v. *HEW*, No. 80-3207 (6th Cir., Dec. 16, 1982); *Rice* v. *President and Fellows of Harvard College*, 663 F.2d 336 (1st Cir., 1981); *Brown* v. *Sibley*, 650 F.2d 760 (5th Cir., 1981); *Board of Public Instruction of Taylor County* v. *Finch*, 414 F.2d 1068 (5th Cir., 1969); *Othen* v. *Ann Arbor School Board*, 507 F. Supp. 1376, 1383 (E.D. Mich. 1981), *aff'd on other grounds*, No. 81-1259 (6th Cir., Feb. 2, 1983); *Mandel* v. *HEW*, 411 F. Supp. 542 (D. Md. 1976), *aff'd en banc* by an equally divided court, 511 F.2d 1273 (4th Cir.), *cert. denied*. 439 U.S. 862 (1978).

APPENDIX A

Other specific assistance statutes administered by the Department of Education include: grants for the disadvantaged including those going to local educational agencies (20 U.S.C. 2711; *id.* 3803(a)(1)(A)), state agency program for migrants 20 U.S.C. 3803(a)(2)(A)), handicapped (20 U.S.C. 3803(a) (2)(B)), neglected and delinquent (20 U.S.C. 3803(a)(2)(C)), state administration (20 U.S.C. 2844), evaluation and studies (20 U.S.C. 1226b); migrant education (20 U.S.C. 2561); state grants pursuant to 20 U.S.C. 3811 *et seq.*, Secretary's discretionary fund (20 U.S.C. 3851), inexpensive book distribution (20 U.S.C. 3851(b)(1)), arts in education (20 U.S.C. 3851(b)(2)), alcohol and drug abuse education (20 U.S.C. 3851(b)(3)), law-related education (20 U.S.C. 3001-03), discretionary projects (20 U.S.C. 3851(a)); training and advisory services (42 U.S.C. 2000c-3), Follow Through (Part B, Headstart Follow-Through Act), Ellender Fellowships; women's educational equity programs (20 U.S.C. 3341-48), bilingual education training grants (20 U.S.C. 3261), bilingual desegregation grants (20 U.S.C. 3261); individual Indian education programs (20 U.S.C. 241aa; *id.* 3385; *id.* 1211a), individual education for the handicapped programs (20 U.S.C. 1411; *id.* 1419; *id.* 1422; *id.* 1421; *id.* 1424; *id.* 1423; *id.* 1424a; *id.* 1451-52; *id.* 1433; *id.* 631; *id.* 632; *id.* 634; *id.* 1431; *id.* 1432; *id.* 1434; *id.* 1418); individual rehabilitation services and handicapped research programs (29 U.S.C. 720(b)(1); *id.* 730; *id.* 770; *id.* 780; *id.* 796; *id.* 711(c); *id.* 774; *id.* 776); individual vocational and adult education programs (20 U.S.C. 2330-34; *id.* 2350-56; *id.* 2303, *id.* at 2401-02; *id.* 2370; *id.* at 2380; *id.* at 2305; *id.* 2302(d); *id.* 11; *id.* 1203)); individual student financial assistance programs (20 U.S.C. 1070b) *id.* 1987aa; *id.* 1070c); individual higher and continuing education programs (20 U.S.C. 1070d; *id.* 1070e1; *id.* 20 U.S.C. 1221e-1(b)(2); *id.* 20 U.S.C. 1133; *id.* 1121; *id.* 1130; *id.* 1134d; *id.* 1134; *id.* 1134L; *id.* 1134n; *id.* 1135a-3); libraries and learning resources (20 U.S.C. 355e; *id.* 1022-24; *id.* 1031-34; *id.* 1041-46).

APPENDIX B

Other general aid programs include certain assistance to new community colleges under the Fund for the Improvement of Postsecondary Education program (20 U.S.C. 1135a-2) and aid to land grant colleges (7 U.S.C. 321-2a).

Mr. SIMON. Thank you, Mr. Reynolds.

Our final witness is Hon. Mary Frances Berry, member of the U.S. Commission on Civil Rights. Commissioner Berry.

STATEMENT OF MARY FRANCES BERRY, MEMBER, U.S. COMMISSION ON CIVIL RIGHTS

Dr. BERRY. Good morning, Mr. Chairman.

Before I came up here this morning to testify, I was a little bit disturbed about the civil rights enforcement record of the administration in higher education. Now that I came up here, I am greatly worried and more disturbed than I was. Based on what I have heard and what I have read here, I have even more serious concerns.

I might say that I have been watching this whole process of civil rights enforcement in higher education in government and out of government for about 10 years, in a bipartisan way. I mean, I was the first consultant to the Office of Civil Rights to organize a higher education division when Secretary Weinberger, who is a Republican by the way, was Secretary of HEW and when Stan Pottinger ran the Office of Civil Rights. I was also on the Democratic administration as Assistant Secretary and very much involved, and between that period provost at the University of Maryland, College Park, and chancellor at the University of Colorado, being out there in an institution and seeing what it was like on the other side of the table.

I can say now, with my experience with the Commission, we recognize that there have always been delays in civil rights enforcement in higher education, and I have seen it in and out of government. But this is the first time we have had attempts to change policy, and to do it in a way that would narrow the scope of the law without either waiting for the Supreme Court to decide that it should be narrowed, or asking Congress to change the law. We have seen a persistent pattern of that happening over the last 2 years.

To answer specifically your questions—and by the way, I have written testimony that I would submit for the record, as well as documents pertaining thereto.

Mr. SIMON. That will be entered in the record.

Dr. BERRY. To answer specifically your questions that were posed to us, in sum, the experience of the Commission in gathering information on this subject has been either letters that, as it turned out, do not fully disclose what is going on, or letters that are unresponsive, and repeated attempts to get information, in particular from the Education Department, and then having to threaten to subpena information from them before we could finally get a full response.

What is our evaluation of the policies? Based on what we know about them generally, we again think this is an unprecedented divergence from past practices in Republican and Democratic administrations that pose a threat to civil rights. What the implications are generally, we think the people who are relying on this protection, to keep them from being discriminated against on the basis of race and sex in higher education, will have their rights undermined by this approach if it should ever become validated by the court, and now they are having their rights undermined by the Department of Justice and the Education Department proceeding as if the law has been changed when the law hasn't even been changed. More about that, Mr. Chairman.

The Department of Justice and Education Department have been trying to narrow the instances in which they can subject a school to civil rights enforcement. That is really what they've been doing, and they have been doing it in a variety of ways. Under title VI, they talk about these consent decrees that they have. I was disturbed to hear them say they were modeled on the North Carolina consent agreement, which in fact is going to reduce the higher education opportunity available to blacks in that State. It may result in some desegregation for black institutions, very little desegregation of the predominantly white institutions, and I predict that in 10 years you will have fewer blacks, percentagewise and number wise, who will be able to go on to institutions of higher education because of the failure to set goals and timetables for the predominantly white institutions.

All of this was done in violation of the guidelines which had been approved by OCR and by the court to be used in civil rights enforcement in those States. So I just think that's outrageous, the Commission thinks it's outrageous, and in the case of Louisiana, also.

The other thing that they have done is that—we know the sad tale, which they didn't mention, last year of the fight over the tax exemption for segregated institutions of higher education, which went its shabby little way all the way up to the Supreme Court having to ask for a special counsel because the Justice Department refused to defend what we regard as justice in that case. So that was another effort on their behalf.

But the cockpit of the current battle in higher education is title IX, and how interpreting title IX narrowly will affect not only equality of educational opportunities for women, but title VI enforcement and title IX enforcement.

We at the Commission have watched very closely as Justice and the Education Department have tried to decide how many different ways they can find to narrow the scope of title IX without again asking Congress to pass a law, or without waiting for a Supreme Court decision, and ignoring the 1975 regulations.

We watched them as they tried to decide whether to exclude GSL's as Federal financial assistance, and I came up here last year and testified in that regard. We noted that in their regulatory agenda they said they proposed to issue a notice of proposed rulemaking, doing it anyway, after all the testimony and everything else.

I was really disturbed this morning to hear Mr. Singleton say, in reading his testimony, that, in fact, they are planning to issue this notice of proposed rulemaking, excluding guaranteed student loans, which is the big bucks, as we know, in higher education, as a basis of Federal financial assistance for which one can enforce a title IX. And for them to do that in face of the bipartisan support over the years for the interpretation that it is financial assistance, I just consider outrageous. This will create tremendous problems in this area.

So I am also disturbed because we, as recently as the day before yesterday, received a letter from the Secretary in which he assured us that no changes were being made in the regulations. And I come here this morning and find out that they are planning to issue an NPRM on this subject anyway. So we will have to assess that letter.

The other thing we watched and wrote letters about back and forth, all of which are in the documents which I will submit for the record, is when Justice tried to decide not to appeal the *Richmond*, case, what to do about the *Richmond* case, and we watched that and we wrote back and forth as the Assistant Attorney General has noted, and we watched as they decided not to appeal *Hillsdale College*.

And what is wrong with those cases, Mr. Chairman, is not only that they do not follow the interpretation of the legislative history on title IX, but they have absolutely nothing to do with how higher education institutions operate. Anybody who has ever run a college or a university knows that student aid is the major financial support that goes in there, and that that money is used for everything in the institution, which is why all those college presidents come and argue before your committee and before Appropriations every time somebody talks about cutting off the money. So for someone to say that student aid is restricted only to the student aid office and has nothing to do with anything else in the college or university, is just plain crazy, irrational.

In the letters that we got back and forth from the Justice Department, I discover now that we were sort of led down the garden path. Each time we would get these letters, which would tell us "we're only discussing these cases on a case-by-case basis; it doesn't mean any shift in overall policy," and we kept being led down the garden path, but we were bothered when we noticed in the Justice memorandum letters to us the cases they kept citing were all the cases that were opposed to the notion that there was a broad interpretation of title IX. But we kept walking down the garden path.

We noted even one case that they kept citing as being on point was based on a case that was overruled, the *North Haven* case. But we kept believing them and we kept writing back to them, telling them that in *North Haven*, the Supreme Court did not define program specificity and said, in point of fact, that it wasn't defining it. So please don't keep telling us that the court has already said what program specificity is. We kept writing that and we kept trying to say that the court had even approved HEW's use of the "infection" theory on this matter in *North Haven*. But we got these letters, and now we are really worried and our worst fears were realized when we got the March 15, 1983 memorandum from the Assistant Attorney General to the Education Department.

Our worst fears were realized. Here we have title IX slopping over into title VI enforcement, 504 enforcement, which weren't even in the *North Haven* case, all of it based on some argument about *North Haven* requiring us to pinpoint exactly this, and then, in fact, we find the civil rights enforcement in this area is actually in jeopardy.

The other thing that puzzled me this morning is we worried about *Grove City*, which in our opinion is a good case and which does affirm a broad view of civil rights enforcement under title IX, and, by implication, it applied to title VI, and we would worry about what the Justice Department was going to do in that case. Were they going to do what they did in the tax-exempt schools case, either switch sides, drop out of the case altogether, or require a special counsel?

This morning I am puzzled. The Assistant Attorney General said that they had already filed their brief. My understanding was it was not to be filed until July, and we had asked them to tell us what they planned to do about it. I don't know the answer. But if they do switch sides, there will be no case, or there may have to be a special counsel.

In *Grove City*, or in any case like this, a negative ruling that would narrow civil rights enforcement under title IX—and by implication in title VI and 504—what that would really do, it would mean that women's educational opportunity would be cut off in certain programs on these college campuses, that access of the handicapped, for example, to something more than the student aid office, would be cut off, and about $13 billion of money in the education budget of this Government would go to higher education institutions in student aid without any assurances of compliance to the Civil Rights Act, and you would have Federal resources going, in some cases, to support discrimination. This worries us greatly.

There are all kinds of implications, too, Mr. Chairman, for areas not under the jurisdiction of this subcommittee, in the health area. What about medicare and medicaid? What do you do there? Is there some kind of pinpointing theory? What about urban mass transit systems and a whole range of issues?

We would like to see the Justice Department on the side of arguing, as it always has before, that there ought to be a broad view of what title IX and title VI and 504 mean, and that these statutes are designed to see to it in advance that Federal resources do not possibly go to institutions that discriminate, and in arguing otherwise, not only is it acting in a way that the law does not require—and it is clearly a matter of policy, as some of the letters that we are putting in the record will show—but what they are doing is, and without the Supreme Court telling them that they have to do it, breaking faith. They are breaking faith with all the people who fought and died and marched for title VI, and who thought it had broad implications.

It is the same thing they did in the tax-exempt schools fight. They are ignoring the fact that the law is there and what it meant and what all these people struggled to get, and just say "well, you're going to have to pass another law; we're just not going to interpret it that way." They are breaking faith with all the people who struggled and worked for title IX and 504, Mr. Chairman. I still have some hope, and hope, indeed, that they will change their mind.

Thank you.

[The prepared statement of Dr. Mary Frances Berry with attachments follows:]

PREPARED STATEMENT OF MARY FRANCES BERRY, MEMBER OF THE U.S. COMMISSION ON CIVIL RIGHTS

Chairman Edwards, Chairman Simon, and members of the subcommittees, I am Mary Frances Berry, member of the United States Commission on Civil Rights.

The Commission is pleased to respond to your request for testimony on the enforcement of civil rights statutes in higher education, specifically Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. These laws, fully enforced, as Congress intended, would prevent discrimination on the basis of race, color, national origin, sex, or handicap throughout most of the Nation's higher education system. They have not been and are not being fully enforced.

Inadequate civil rights enforcement in education is not a new problem. We have reported in the past that excessive delays and insufficient resources for aggressive efforts too often have characterized enforcement of Federal laws to provide equal educational opportunity in our Nation's schools. What is different about the situation today is that the

Departments of Education and Justice have decided, as a matter of policy, to give up trying to enforce requirements for eliminating the many pervasive forms of discrimination in education. Indeed, the policies they have adopted, unless reversed, could result in a narrowing of Title VI, Title IX, and Section 504. In our view, administration initiatives are leading toward a crisis for Federal equal educational opportunity guarantees.

Since this administration took office, the Commission has been concerned by efforts to reverse longstanding Federal civil rights enforcement policies. In one area after another, the administration has retreated from broad remedial interpretations of civil rights laws established in regulations and successfully defended for many years during Republican and Democratic administrations alike. The retreat in education has been very pronounced.

In January 1982, for example, the Treasury Department announced it would abandon its 10-year policy denying tax exemptions to racially discriminatory private schools, including colleges and universities. The Justice Department, which was responsible for defending that policy before the Supreme Court, reversed its position and actually urged the court to nullify lower court judgments against two such schools. It maintained Title VI would have to be amended before it could withhold tax benefits to enforce nondiscrimination. As members of the Subcommittee on Civil and Constitutional Rights may recall, the Commission testified against this interpretation. We are pleased Congress shared our view that the enforcement was inadequate, not the law. Nevertheless, there might have been no effective voice for established Federal enforcement authority in the judicial forum had the Supreme Court not taken the extraordinary step of appointing a special counsel. A decision now is pending in this case.

By the time the tax exemption issue arose, the Commission had noted so many initiatives to roll back Federal civil rights protections in education we felt compelled to write the President about the growing pattern of threats to equal educational opportunity. If I may, I would like to submit a copy of this letter for the record at this time.

Two items cited in our letter were the following:

> * The Department of Education, in accepting higher education desegregation plans, waived established guidelines that have the force of law. In settling its case against North Carolina, for example, the Department ignored requirements, issued under court order, that are crucial to eliminating the vestiges of segregationist policies. These requirements include meaningful goals for desegregating student enrollments, faculties and administrative staffs and plans for eliminating duplicative programs at neighboring black and white colleges. Through the North Carolina consent decree, the Department may have evaded compliance with the court order.
>
> * The Department of Education has continued supporting one State higher education system (Alabama) that refused to make even minimal commitments to equalizing opportunities for black students and educators. Although Congress intended Federal agencies generally to enforce Title VI by terminating funds when all efforts to gain voluntary compliance fail, the Department of Education ... referred the case to the Department of Justice instead. As in the past, this action further may delay Title VI compliance.

The Commission continues to believe that the established guidelines are minimal requirements for dismantling the dual system of higher education and that the Education Department is legally obliged to enforce them.

We, therefore, are greatly concerned by mounting evidence of compromises and delays and are pleased the subcommittees have chosen to probe the recent record. Since you have scheduled other testimony on this specific issue, however, I would like to spend the remainder of my time discussing another area where changing policies jeopardize equal opportunity not only in higher education, but in other federally-assisted programs.

I first want to summarize established Federal policies and then trace recent events that show a major reversal is under way. Finally, I will suggest some implications of the emerging policies and a few of the unanswered questions they raise. We believe no policy change should be pursued while the consequences remain so doubtful and potentially detrimental.

The immediate issue is the extent of the Education Department's authority to enforce Title IX in higher education. Under policies codified in the Department's regulations, Title IX covers any education program or activity receiving or benefiting from Federal funds. This includes programs supported through the tuition and fees students pay with Federal grants and loans. It also includes programs supported by funds authorized for other purposes, such as Federal research grants and contracts. The Department may investigate any unassisted program whose discriminatory practices may "infect" an assisted program. It does not have to determine whether a program receives assistance before beginning an investigation.

These policies, which parallel Title VI and Section 504 policies, were adopted in 1975. They withstood Congressional scrutiny, including extensive hearings before the Subcommittee on Postsecondary Education, and attempts to change them through limiting amendments. No definitive court ruling since then has required the Department to restrict them. Indeed, in the only two Title IX cases the Supreme Court has decided, it stressed the need to interpret the law broadly in order to accommodate Congressional objectives.

The Commission reviewed administrative enforcement of Title IX in 1980. We found a history of delays, inconsistencies, and failures to meet commitments necessary to correct violations and encourage voluntary compliance. We did not find any deliberate policy choice in favor of significantly narrowing enforcement of the law.

Shortly after the current Secretary of Education took office, however, the Department began developing proposals to limit civil rights coverage by exempting schools assisted only by Federal student aid. The Commission's letter to the President, which I already have introduced, summarized the status of this effort in February 1981 as follows:

> * The Department of Education tried to exempt from all its civil rights requirements over 3,500 post-secondary institutions assisted by Federal student aid ... to prevent a court ruling that may uphold its enforcement responsibilities. In an effort to moot the Third Circuit's review of the Department of Education's Title IX enforcement authority [in Grove City College v. Bell] the Secretary of Education ... submitted for Department of Justice approval a proposal to cease counting some types of Federal student aid as Federal assistance for the purposes of civil rights coverage, even though court rulings hold that schools are assisted by such aid. Although the Department of Justice found this proposal also contrary to law, the Department of Education pursued it nonetheless. When the White House rejected the proposal, the Secretary of Education announced he might resubmit a modified version.

As this summary indicates, the Department's efforts to narrow its regulations were driven by policy preferences, not changes in the law.

Chairman Edwards and Chairman Simon, I would like to submit for the record at this time copies of departmental memoranda supporting this conclusion, including a memorandum from the Education Department's General Counsel to the Secretary recommending they risk a probable adverse court ruling to make "a political point." Although the recommendation was overruled, the Department continued its efforts to narrow civil rights obligations based on student aid and now plans to publish a modified proposal in July.

The first sign the Justice Department would not uphold the Education Department's established civil rights policies came last April, when it agreed to drop its defense, in Grove City, of the Department's authority to terminate Guaranteed Student Loans. In the hearings the Subcommittee on Postsecondary Education then held, the Commission reviewed the sound legal bases for the Government's former position and expressed concerns about the policy change. The Assistant Attorney General for Civil Rights, however, testified that a more restrictive policy had not been adopted; he merely had made a decision about a particular case.

Then, in July, a Federal district court issued a ruling that severely restricted civil rights enforcement in education in the Eastern District of Virginia. Specifically, the decision, in University of Richmond v. Bell, limited Education Department Title IX investigations to programs directly receiving Federal funds specifically "earmarked" for them. Programs assisted by Federal student aid, research grants and contracts, or funds directly received by another program all were shielded from scrutiny, as were unassisted programs the Department formerly could investigate under the "infection" theory. In addition, the Department was enjoined from investigating any civil rights violation unless it first could show that the allegedly discriminatory program directly received Federal funds. Despite these serious inconsistencies with the Department's established policies and prevailing case law, the administration decided not to appeal Richmond.

Since the decision came down, the Commission has corresponded extensively on these issues with the Secretary of Education, the Attorney General, and the Assistant Attorney General for Civil Rights. We also have issued a public statement and written the President about our concerns. If I may, I would like to submit copies of this correspondence and our statement for the record at this time.

Rather than summarizing each of these documents, I would like to present the basic issues as we see them. The Commission believes the Departments of Education and Justice had ample grounds for appealing Richmond and that their decision to let the ruling stand represented a sharp reversal of longstanding Federal policies that were consistent with the broad remedial purposes of civil rights laws. We believe the Richmond court's theories, if adopted as nationwide policy, would decimate civil rights protections in education under not only Title IX, but Title VI and Section 504. We also believe they ultimately could jeopardize civil rights protections in many other federally-assisted areas, such as health care and municipal and social services, where serious discrimination persists. The Commission fears Richmond standards will become nationwide Federal enforcement policy if the preferences of the Justice Department prevail.

In his letters to us, the Assistant Attorney General discounted the policy implications of the decision not to appeal Richmond. As in his testimony on the Grove City brief, he suggested the decision merely reflected an assessment of a particular case. His letters, however, implied approval of narrow interpretations of Federal civil rights protections, including the Richmond opinion. In conjunction with the Education Department, moreover, the Justice Department chose not to appeal another restrictive ruling, the Sixth Circuit Court of Appeals decision in Hillsdale College v. Department of Health, Education, and Welfare. This decision also limited Title IX protections to directly assisted programs. As a result, higher education institutions assisted only by Federal student aid in Michigan, Ohio, Kentucky, and Tennessee now may deny women equal opportunity in particular courses of study, other professionally related activities, counseling, health services, housing, or the many other aspects of campus life not directly targeted by Federal funds. The Assistant Attorney General endorsed the reasoning in this case and suggested that rulings upholding the Education Department's broad enforcement authority, including the Third Circuit Court of Appeals' decision in Grove City, were exceptional and extreme. His arguments consistently implied that the Supreme Court's ruling in North Haven Board of Education v. Bell "pinpointed" Title IX to directly assisted education programs.

The Commission does not agree. As our letters repeatedly have stressed, the Supreme Court in North Haven held only that Title IX is "program specific." It expressly left open, for resolution in future litigation, the question of the extent of coverage this term allows. The majority said, "We do not undertake to define 'program' in this opinion."

It also cited, as consistent with program specificity, a Department of Health, Education, and Welfare statement that any education program or activity is subject to Title IX requirements "if it receives *or benefits from*" Federal financial assistance (emphasis added).

There has been no definitive ruling "pinpointing" Title IX or related civil rights laws to directly assisted education programs. There is a range of lower court opinions that could form the basis of a position on the issue. Like the Education Department's regulatory plans, therefore, the Assistant Attorney General's legal analyses clearly are shaped by a policy preference for narrowing Federal civil rights enforcement in education, not controlling precedent.

Despite assurances to the contrary, we believe that recent litigation decisions were not case-specific, but reflect a substantial policy change. On March 15, the Assistant Attorney General advised the Education Department to adopt standards based on *Richmond* and *Hillsdale* for all its civil rights investigations. Again, *North Haven* was cited as if it foreclosed broader enforcement authority. I already have noted that the Supreme Court's reference to program specificity did not limit Title IX to directly assisted programs. Nor did the Court in any way limit Title VI or Section 504. In our view, *North Haven* is being stretched beyond all reasonable bounds to justify a major retrenchment in Federal civil rights enforcement at all educational levels.

The Commission wrote the Secretary of Education and the Attorney General about the March 15 memorandum. If I may, I would like to submit copies of the memorandum and these letters for the record at this time and then summarize our concerns.

The Commission has been concerned for some time about the possible administrative impact of *Richmond* and other rulings limiting Title IX coverage. We wrote the Secretary of Education in December requesting the Department's views of its civil rights enforcement authority in light of these rulings. After considerable delay, the Secretary informed us that the Department's civil rights policies were expressed in its regulations as published and indicated they were being fully enforced except in the jurisdictions covered by *Richmond* and *Hillsdale*. In those jurisdictions, he indicated, only Title IX enforcement had been curtailed. No further modifications would be made, we were told, unless required by *Grove City* or other future Supreme Court decisions. This statement differs dramatically from the policies advanced in the Assistant Attorney General's memorandum. We have asked the Secretary to inform us whether the Department intends to stand by its statement or possibly change policies without awaiting a definitive ruling on their validity. We just received a response and would be pleased to comment further on the Department's enforcement policies when we have completed our assessment of it.

We also have pressing concerns with the Justice Department. In early July, it is scheduled to file a brief before the Supreme Court in *Grove City*. One of the major issues in the case is whether Title IX covers all education programs assisted by Federal funds, as established regulatory policies provide, or only directly assisted programs, as plaintiffs argue and the Assistant Attorney General apparently would prefer. We have asked the Attorney General to inform us by May 23 whether the Assistant Attorney General represents departmental policy on this issue. If he does, and if his view prevails, Federal civil rights enforcement in higher education and other federally-assisted areas would be in great jeopardy.

Specifically, another situation like the tax exemption case might develop, with the administration refusing to defend enforcement policies upheld at the appellate level and switching sides to support the plaintiffs. There is no assurance the Supreme Court then would appoint another special counsel. Another possibility is that, as at the appellate level, the administration might offer an incomplete, lukewarm defense of established policies in Grove City. We do not know what the administration will do. No one can predict how the Supreme Court will respond. It seems fair to say, however, that the policies the Assistant Attorney General thus far has pursued could increase the chances of a definitive ruling "pinpointing" Title IX.

Such a ruling certainly would roll back Federal civil rights protections in higher education. We know, for example, that the restrictions imposed by Richmond have hampered the ability of the Education Department's Office for Civil Rights (OCR) to investigate and resolve Title IX problems. Specifically, according to documents provided at our request by the Assistant Secretary for Civil Rights, Richmond blocked OCR from requiring William and Mary College to correct Title IX violations in its intercollegiate athletics program. It also blocked an investigation of possible sex discrimination in George Mason University's law school admissions program. Under a Supreme Court ruling as restrictive as Richmond, such problems would multiply all over the country. Even a ruling following the somewhat less extreme theory of Hillsdale could leave many women no recourse for denials of equal educational opportunity.

It is impossible to say for certain just how such a ruling would affect minority and handicapped persons in higher education. Title VI and

Section 504, however, are linked by language, legislative history, and case law to Title IX, so the courts, if not the administration, well might impose similar restrictions on enforcement of these laws. It is not clear that the Education Department's established higher education desegregation requirements could be enforced under a ruling "pinpointing" Title VI.

There is another type of impact in higher education to consider. That is the dollar volume of Federal assistance that no longer would require civil rights compliance. According to the Project on the Status and Education of Women, as little as 4 percent of 1982 authorized Education Department funds for higher education would have been tied to civil rights obligations under a Richmond-type theory of coverage. If policies advanced by the Assistant Attorney General's recent memorandum had been in force last year, nearly $13 billion in Education Department funds could have flowed to higher education programs with no assurance they were not supporting discrimination. The total volume of Federal support for possibly discriminatory practices would have been much larger because, as you know, higher education programs receive substantial assistance through research grants and contracts from other departments.

In closing, let me suggest that the implications of the Assistant Attorney General's policies could extend far beyond higher education. His March 15 memorandum already has proposed restrictions on Education Department investigations in elementary and secondary, as well as higher, education. We particularly are concerned about the additional complications these would create for civil rights enforcement in block grant programs, where we already foresee special problems.

We also are concerned about how limits the Assistant Attorney General perceives in the Education Department's civil rights authority might be applied to other Federal assistance agencies. Certain health care benefits, for example, are administered in a manner similar to Federal student aid. We have asked the Attorney General whether the Justice Department will seek to restrict Department of Health and Human Services' civil rights investigations in hospitals assisted by Medicare and Medicaid to the offices that handle those funds. A similar question could be raised about Veterans Administration enforcement under education and health care benefits programs. There are additional questions about how "pinpointing" would work in urban mass transit systems, public housing, parks and recreation, and a host of other federally-assisted areas. We believe these should be answered before any further effort is made to change basic civil rights enforcement policies.

The established policies, fully enforced, would prevent Federal financial support for discriminatory practices and provide individuals effective protection against such practices. The Commission believes, as the Supreme Court ruled in Cannon v. University of Chicago, that this is what Congress intended. We fear, however, the Supreme Court may not hear administration arguments supporting this intent unless current needlessly restrictive policies are reversed before the brief in Grove City is due.

I would be pleased to answer any questions you may have.

Statement of U.S. Commission on Civil Rights
on
Administration Decision Not to Appeal University of Richmond v. Bell

September 15, 1982

The U.S. Commission on Civil Rights is disappointed by the Administration's decision not to appeal the Federal district court ruling in University of Richmond v. Bell, No. 81-0406-R (E.D. Va. 1982). This decision is a narrowing of Federal civil rights enforcement policy which, if pursued, would roll back civil rights protections from a vast number of education programs assisted by Federal funds. We have called on the Administration to exercise leadership in promoting equal opportunity and believe, in this case, it has failed.

The Richmond court ruled that the Department of Education could not enforce Title IX of the Education Amendments of 1972 in an intercollegiate athletics program receiving no direct, specifically "earmarked" Federal financial assistance. As we wrote the Secretary of Education and the Attorney General on August 10, this ruling reaches far beyond sex discrimination prohibitions in athletics. If accepted as proper limits, it would decimate Title IX protections, jeopardize protections against race and handicap discrimination under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and put crippling limits on the Education Department's investigative authority.

The Justice Department has said the Education Department "was not inclined" to appeal this ruling and it went along. Justice also said "there was little room to argue" against the ruling because it "is pretty sound as a matter of law." We understand the Department's reluctance to pursue a case against an affected department's wishes. We, however, believe that the Department of Education, which is charged with enforcing civil rights, should have been eager to appeal a decision that so undermines its authority and that the Justice Department should have placed its obligation to uphold Federal civil rights laws above its client's wishes, if necessary.

We further believe, as our letters indicated, that legislative history and judicial precedent give ample grounds for challenging the ruling. The decision not to appeal is particularly disturbing because it ignores a very recent higher court ruling directly contrary to the Richmond court's theories, the Third Circuit Court's decision in Grove City College v. Bell, No. 80-2284, 2384 (3d Cir. Aug. 12, 1982).

Specifically, the Richmond court ruled that Federal student aid did not count as Federal financial assistance for the purposes of civil rights coverage. By contrast, the Third Circuit, following established precedent, held that "Federal financial assistance" includes student grants because they benefit the schools students attend and Congress intended to preclude any Federal support for discrimination in education when it enacted Title VI and Title IX. Clearly, there is "room to argue" on this issue.

The Richmond court also ruled that Title IX covers only education programs receiving Federal funds specifically "earmarked" for them. The Third Circuit, however, termed this approach "illogical" and noted it could undercut enforcement. It concluded that Congress did not intend "program" to mean "separate, discrete, and distinct components or functions of an integrated educational institution," suggesting that, insofar as educational components are interrelated, they all are covered by civil rights laws when the institution receives general, "nonearmarked" Federal aid. It specifically held that Federal student grant funds bring the entire recipient institution under civil rights requirements. The University of Richmond has students on Federal grants.

The Third Circuit's affirmation of the Education Department's broad civil rights authority, joined with earlier rulings, could have furnished strong arguments in a Richmond appeal. We believe the Administration should have seized them to defend long-standing Federal policies and elementary principles of law rejected by the district court.

We understand the Justice Department still is looking at the critical civil rights issues Richmond involves and will have further opportunities to litigate them. We urge that future decisions in this area uphold, rather than disregard, the broad remedial purposes of civil rights laws. The Administration thus will send a needed signal that the Federal Government remains committed to equal opportunity.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

February 12, 1982

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The U.S. Commission on Civil Rights views with increasing alarm efforts to end Federal leadership in promoting equal educational opportunity. Beginning in the 1960s, Congress enacted civil rights laws to reinforce and extend the equal rights guarantees of the Thirteenth, Fourteenth, and Fifteenth Amendments.[1] These laws include Title VI of the Civil Rights Act of 1964,[2] which prohibits discrimination on the basis of race, color, or national origin in Federally-assisted programs, including education programs, and Title IX of the Education Amendments of 1972,[3] which prohibits discrimination on the basis of sex in Federally-assisted education programs. When Congress passed these laws, majorities in both houses were convinced by overwhelming evidence that State and local authorities would not provide equal opportunity unless the Federal Government required them to do so.[4] When Congress adopted Title VI, the

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[1] U.S. CONST. amend. XIII, XIV, XV. For a full discussion of the constitutional basis of Federal civil rights laws and programs and the problems that necessitated them, see, U.S., Commission on Civil Rights, Civil Rights: A National, Not a Special Interest (June 1981) (hereafter cited as Civil Rights Statement).

[2] 42 U.S.C. §2000d-2000d-6 (1976 & Supp. III 1979).

[3] 20 U.S.C. §1681 (1976).

[4] The final vote for passage of the Civil Rights Act of 1964 was 73-27 in the Senate, 289-126 in the House. 110 CONG. REC. 14511, 15897 (1964). The vote for passage of Title IX (the Education Amendments of 1972) was 63-14 in the Senate and 218-180 in the House. 118 CONG. REC. 18861, 20340 (1972). For a discussion of bipartisan support for civil rights laws, see, Civil Rights Statement, pp. 17-30.

Civil War Amendments guaranteeing equal rights had been in force for over 90 years, and 10 years had passed since the Supreme Court ruled public school segregation unconstitutional.[5] Yet State and local officials in many regions of the country still maintained segregated school systems.[6] Before Congress passed Title IX, many postsecondary institutions had policies denying women equal opportunity in admissions, financial aid, extracurricular activities (including athletics), and employment. Elementary and secondary schools commonly limited women's access to vocational and other education programs and to administrative positions.[7]

Over the years, this Commission consistently has found that only a strong Federal commitment to enforcing these civil rights laws can make their promise of equal educational opportunity a reality.[8] As enforcement improved, we have noted progress in some areas.[9] The problems Congress intended to combat in enacting these laws have not disappeared, however. Some school systems still are illegally segregated.[10] Other policies and practices rooted in past and still persisting prejudices continue to deny minorities, women, and other victims of discrimination the equal education they need to compete for their fair share of employment opportunities.[11] Strong Federal enforcement of civil rights protections in education remains as vital as ever. We, therefore, are deeply disturbed by initiatives that would roll back these protections.

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[5] Brown v. Board of Education, 347 U.S. 483 (1954).

[6] See, U.S., Commission on Civil Rights, Racial Isolation in the Public Schools (1967). See also, U.S., Commission on Civil Rights, With All Deliberate Speed: 1954-19?? (November 1981), pp. 11-14, 18-19 (hereafter cited as With All Deliberate Speed).

[7] See, for example, Discrimination Against Women: Hearings on Section 805 of H.R. 16098 Before the Special Subcomm. on Education of the House Comm. on Education and Labor, 91st Cong., 2d Sess. (1970); 118 CONG. REC. 5803-15 (1972); U.S. Office of Education, Department of Health, Education, and Welfare, Commissioner's Task Force on the Impact of Office of Education Programs on Women, A Look at Women in Education: Issues and Answers for HEW (November 1972), pp. 4-10, 14-17.

[8] See, for example, U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort—1974, 7 vols. (November 1974-June 1977).

[9] See, for example, U.S., Commission on Civil Rights, More Hurdles to Clear (July 1980), pp. 11-30; Civil Rights Statement, pp. 31-32; With All Deliberate Speed, p. 31.

[10] For a discussion of unresolved desegregation issues in Chicago, New York City, St. Louis, Kansas City, Missouri, and other major cities, see, With All Deliberate Speed, pp. 31-34.

Efforts in Congress to limit Federal enforcement of equal educational opportunity have been a long-standing concern. These efforts have increased and jeopardize not only constitutional guarantees of equal rights, but the fundamental separation of powers on which the Constitution is built. They include a number of budget amendments that legislate major changes in civil rights policy without offering adequate opportunities for Congressional consideration and public debate.

- Congress again is considering budget amendments that would keep Federal agencies from carrying out their responsibilities for enforcing equal educational opportunity. For the past four years, such amendments prevented the Department of Health, Education, and Welfare and, more recently, the Department of Education from requiring pupil transportation when school desegregation otherwise cannot be achieved.[12] These amendments have deprived the Federal Government of its most effective tool for enforcing civil rights protections against segregation, delayed remedies for violations of these protections, and jeopardized the

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[11] For example, from February through mid-October of 1981 alone, the Department of Education's Office for Civil Rights found civil rights violations in 288 school districts and postsecondary institutions. Clarence Thomas, Assistant Secretary for Civil Rights, Department of Education, letter to Margaret Kohn, National Coalition for Women and Girls in Education, Dec. 28, 1981.

[12] The first such amendment, known as the Eagleton-Biden amendment, was added to H.R. 7555, 95th Cong., 2d Sess. (1978), providing appropriations for the Departments of Labor and Health, Education, and Welfare for fiscal year 1978. The current amendment was enacted into law as part of H.R. 7998. CONG. REC. H. 7945, 7951, 7971 (daily ed. Aug. 27, 1980). For a discussion of the concerns raised by the Eagleton-Biden amendment, see, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letters to President Jimmy Carter, May 16. 1978 and Nov. 21, 1980. See also, U.S., Commission on Civil Rights, Report to the President and to the Congress, January 1981, pp. 10-12.

Executive's fulfillment of its fundamental obligation to enforce the law. Congress also has attempted to limit the Department of Justice's involvement in school desegregation cases.[13] Blocked by a Presidential veto in 1980,[14] the attempt has been renewed this year. The Senate now has approved an amendment to Justice's authorization that would impose even stricter limits on its ability to seek remedies for illegal segregation than a similar amendment earlier approved by the House.[15] Together with the limit on Department of Education enforcement, this amendment would require continuing Federal support for unconstitutional school segregation. It also would limit the courts' powers to order desegregation remedies and, thus, invade their separate jurisdiction.

- Other pending budget amendments would perpetuate limits on Internal Revenue Service activities to identify racially discriminatory schools that should be denied tax exemptions.[16] Still another amendment would prohibit the Department of Education from requiring schools to establish the goals and timetables needed to stimulate and monitor efforts to remedy the effects of illegal discrimination.[17] All these "back door" limits on Federal civil rights protections would perpetuate denials of equal educational opportunity and keep the Executive from fulfilling its constitutional responsibility to enforce the law.[18]

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[13] H.R. 7584, 96th Cong., 2d Sess. (1980).

[14] Message to the House of Representatives Returning H.R. 7584 Without Approval, 16 WEEKLY COMP. OF PRES. DOCS. 2809 (Dec. 13, 1980). We urged the President to veto the Department of Justice appropriations bill because the restricting amendment would have endangered gravely the Executive's ability to correct school segregation and implicated the Federal Government in perpetuating constitutional violations. *See*, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Letter to President Jimmy Carter, Nov. 21, 1980.

[15] Amendment to S. 951, 97th Cong., 2d Sess. (1982). 128 CONG. REC. S. 393-415 (daily ed. Feb. 4, 1982). The House measure is an amendment to H.R. 3462.

[16] Ashbrook amendment to H.R. 4121, 97th Cong., 2d Sess. (1982). This limitation first was imposed by an amendment to the Treasury, Postal Service and General Government Appropriations Act for Fiscal Year 1980.

- Congress is considering bills that would limit the courts' powers to require remedies for illegal school segregation.[19] These would prevent the courts from ordering measures, such as student reassignments, that are necessary to correct deliberate denials of constitutionally protected civil rights. Some even would undo court-ordered remedies already in effect. Such measures would perpetuate violations of the Constitution and subvert the constitutional balance of powers.[20]

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[17] Walker amendment to H.R. 4560, 97th Cong., 2d Sess (1982). For our view that this amendment would jeopardize the Federal Government's ability to enforce significant civil rights measures by limiting necessary numerically-based remedies, *see*, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Richard S. Walker, U.S. House of Representatives, Oct. 30, 1980.

[18] For our views that budget amendments limiting Federal civil rights enforcement retard progress toward equal educational opportunity and undo the work of Congress without careful consideration, *see*, for example, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Birch Bayh, Chairman, Subcomm. on the Constitution of the Senate Judiciary Comm., Sept. 16, 1980 and testimony before the Subcomm. on Civil and Constitutional Rights of the House Judiciary Comm., Sept. 21, 1981. *See also*, U.S., Commission on Civil Rights, Statement on the 96th Congress and Civil Rights, Oct. 15, 1980.

[19] H.J. Res. 56, H.R. 2047, S. 528, S. 1647, S. 1760, 97th Cong., 2d Sess. (1982). *See also*, amendment to S. 951, 97th Cong., 2d Sess. (1982), discussed above.

[20] For a full discussion of how bills to limit court-ordered remedies for illegal segregation threaten the Constitution, *see*, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Lowell Weicker, Chairman, Subcomm. on State, Justice, Commerce, and the Judiciary of the Senate Appropriations Comm., July 6, 1981.

- The Senate is considering a bill to reduce Title IX protections.[21] It would eliminate all Title IX requirements prohibiting job discrimination[22] and prohibit sex discrimination against students only in some directly assisted programs.[23] It thus would prevent Federal enforcement of equal educational opportunity for women in most programs assisted by Federal funds.[24] The sponsor of the bill has said he does not believe the Federal Government should be an "enforcer" in education.[25]

Executive branch initiatives pose further threats to the Nation's progress toward equal educational opportunity. First, there has been a concerted retreat from full enforcement of civil rights requirements in education.

- The Department of Education halted efforts to strengthen Title VI compliance requirements protecting national-origin minority children who have have limited proficiency in English. Last February, the Secretary of Education rescinded a proposed rule that sought to guarantee these children the opportunity to learn English without falling behind in other subjects.[26] The rule also would have given schools clearer guidance in

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21. S. 1361, 97th Cong., 1st Sess. (1981).

22. *Id.* §§1(1), 2, 3.

23. *Id.* §§1(4), 2, 3.

24. For a full discussion of the effects this bill would have on Federal civil rights enforcement and women now protected by Title IX, *see*, U.S., Commission on Civil Rights, Staff Analysis of S. 1361, Sept. 22, 1981 (hereafter cited as S. 1361 Comments).

25. 127 CONG. REC. S. 6124 (daily ed. June 11, 1981) (Remarks of Senator Hatch).

26. 45 Fed. Reg. 52053 (1980) (the Department of Education's proposed rule and rationale); 46 Fed. Reg. 10516 (1981) (rescission of the proposal). For our views on the improvements this rule would have effected, *see*, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Antonio J. Califa, Office for Civil Rights, Department of Education, June 11, 1981.

how to comply with Title VI and the Equal Educational Opportunity Act of 1974.[27]

- The Department of Education, in accepting higher education desegregation plans, waived established guidelines that have the force of law. In settling its case against North Carolina,[28] for example, the Department ignored requirements, issued under court order,[29] that are crucial to eliminating the vestiges of segregationist policies. These requirements include meaningful goals for desegregating student enrollments, faculties, and administrative staffs and plans for eliminating duplicative programs at neighboring black and white colleges.[30] Through the North Carolina consent decree, the Department may have evaded compliance with the court order.[31]

- The Department of Education has continued supporting one State higher education system (Alabama) that refused to make even minimal commitments to equalizing opportunities for black

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27. Pub. L. No. 93-380, tit. II, 88 Stat. 514 (codified at 20 U.S.C. §§1701-58 (1976 & Supp. III 1979).

28. North Carolina v. Dept. of Educ., No. 79-217-CIV-5 (E.D.N.C. July 17, 1981) (consent decree).

29. Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (prepared pursuant to Second Supplemental Order), Adams v. Califano, 430 F. Supp. 118 (1977).

30. For our views on the inconsistencies between this settlement and the court order, *see*, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Terrel H. Bell, Secretary of Education, July 10, 1981 (hereafter cited as Desegregation Plan letter) and enclosed "Briefing Memorandum on the Current Status of Higher Education Desegregation in North Carolina" (July 9, 1981). For our views on the need for even stronger desegregation requirements, *see*, U.S., Commission on Civil Rights, *The Black/ White Colleges: Dismantling the Dual System of Higher Education* (April 1981), pp. 12-41.

31. Desegregation Plan letter. The Federal court that ordered the desegregation requirements does not believe it has jurisdiction to consider whether the consent decree complies with them.

students and educators.[32] Although Congress intended Federal agencies generally to enforce Title VI by terminating funds when all efforts to gain voluntary compliance fail,[33] the Department of Education last month referred the case to the Department of Justice instead.[34] As in the past, this action further may delay Title VI compliance.[35]

- The Department of Education announced it would consider changing its rules so that schools it assists no longer would have to file an assurance of their compliance with civil rights laws.[36] This change would obscure the basic principle of the civil rights laws the Department enforces, since these laws require nondiscrimination as a condition of Federal assistance. It also would eliminate a tool for seeking voluntary compliance[37] and violate a court-ordered requirement.[38]

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32. Clarence Thomas, Assistant Secretary for Civil Rights, Department of Education, letter to Wm. Bradford Reynolds, III, Assistant Attorney General, Civil Rights Division, Department of Justice, Jan. 4, 1982 (hereafter cited as Alabama Referral letter).

33. 42 U.S.C. §2000d-1 (1976). For legislative history of Title VI, *see*, S. REP. No. 872 and H.R. REP. No. 914, 88th Cong., 2d Sess., *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2355. For a discussion of Congressional intent in Title VI enforcement cases, *see*, U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. III, *To Ensure Equal Educational Opportunity* (January 1975), p. 130 (hereafter cited as *To Ensure Equal Educational Opportunity*) and vol. VI, *To Extend Federal Financial Assistance*, pp. 22-24.

34. Alabama Referral letter.

35. For a discussion of the damage done to Title VI enforcement and minority students by past failures to use fund terminations, *see*, *To Ensure Equal Educational Opportunity*, pp. 127-33. *See*, Center for National Policy Review, *Justice Delayed, Denied* (1974), pp. 68-71 for a discussion of the delays caused by referring cases to Justice.

36. Department of Education Semiannual Regulations Agenda and Review List, 46 Fed. Reg. 54576 (1981).

37. *See*, Daniel Oliver, General Counsel (Designate), memorandum to the Secretary of Education, May 29, 1981, p. 8.

38. Adams v. Califano (Women's Equity Action League), No. 3095-70, order at 21 (D.D.C. Dec. 29, 1977).

- The Department of Justice settled a major school desegregation case (Chicago) by accepting a plan it formerly had rejected for failures to meet its requirements[39] and dropped, rather than again appeal, a second major case (Houston).[40] In other reversals of Federal civil rights policy, the Justice Department now is supporting State efforts, as in the State of Washington, to limit local voluntary desegregation efforts[41] and, as in Texas, to permit denials of equal educational opportunity to alien children not lawfully admitted into the country.[42]

- The Department of the Treasury reversed its 10-year policy of denying tax exemptions to racially discriminatory schools.[43] The same day, the Department of Justice urged the Supreme Court to nullify judgments won against two such private schools in the Fifth Circuit.[44] In insisting that Congress specifically must authorize Treasury's former policy, the Executive disregarded its responsibilities under the Constitution, the Internal Revenue Code, and Title VI.[45]

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[39] Joint Statement of the United States and the Chicago Board of Education, United States v. Bd. of Educ., No. 80C 5124 (N.D. Ill. Aug. 28, 1981). For our views on this settlement, *see*, *With All Deliberate Speed*, pp. 28-29.

[40] Memorandum and Order, Ross v. Houston Independent School Dist., C.A. No. 10444 (S.D. Tex. June 17, 1981), 282 F. 2d 95 (5th Cir.) *stay denied*, 364 U.S. 803 (1960).

[41] Memorandum for the United States, Washington v. Seattle School Dist. No. 1, 633 F. 2d 1338 (9th Cir. 1980), *prob. jur. noted*, 50 U.S.L.W. 3139 (Oct. 13, 1981). For a discussion of Justice's apparent retreat from the principle, enunciated in Brown v. Board of Education, that separate education is inherently unequal, *see*, *With All Deliberate Speed*, pp. 28-30.

[42] Brief for the United States in the consolidated cases of Plyer v. Doe, 501 F. Supp. 544 (S.D. Tex. 1980), *prob. jur. noted*, 101 S. Ct. 2044 (May 4, 1981) and Texas v. Certain Unnamed Undocumented Alien Children, 628 F. 2d 448 (5th Cir. 1980), *prob. jur. noted*, 101 S. Ct. 3078 (June 15, 1981).

[43] Department of the Treasury, *Treasury News*, Jan. 8, 1982.

In addition, reduced resources, requirements, and leadership jeopardize voluntary civil rights compliance and civil rights enforcement in education.

- The education block grant enacted as part of the 1982 Federal budget eliminated funding targeted to desegregating schools.[46] Successful voluntary desegregation efforts that reduce the need for mandatory transportation may not survive because funds formerly supporting such efforts now will be diluted through distribution formulas not based on desegregation needs.[47] The block grant also eliminated required pre-grant reviews,[48] which can produce prompt remedies for civil rights violations.[49] It raised doubts about other requirements that promote effective monitoring and enforcement, including reporting and citizen participation provisions and provisions that help prevent State and local education agencies from using Federal funds to free other funds for discriminatory activities.[50]

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[44] Memorandum for the United States in Goldsboro Christian Schools v. United States, No. 80-1473 (4th Cir. Feb. 24, 1981), *cert. granted*, 50 U.S.L.W. 3265 (Oct. 13, 1981) (No. 81-1) and Bob Jones University v. United States, 639 F. 2d 147 (4th Cir. 1980), *cert. granted*, 50 U.S.L.W. 3265 (Oct. 13, 1981) (No. 81-3), filed Jan. 8, 1982.

[45] For our view that the law requires the Federal Government to withhold tax exemptions, as well as other support, from racially discriminatory schools, *see*, U.S., Commission on Civil Rights, Statement on the Administration's Decision to Revoke Its Revenue Rules and to Grant Tax-Exempt Status to Schools that Discriminate on the Basis of Race, Jan. 19. 1982. *See also*, Hearings on Tax Exemptions for Segregated Private Schools Before the Subcomm. on Civil and Constitutional Rights of the House Judiciary Comm., 97th Cong., 2d Sess. (Statement of Arthur S. Flemming, Jan. 28, 1982).

[46] Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §561(a)(1) 95 Stat. 469, *reprinted in* U.S. CODE CONG. & AD. NEWS (Supp. No. 7, Sept. 1981). This act consolidated the Emergency School Aid program with programs authorized for other purposes and let school districts decide what programs to fund.

[47] The Montclair, New Jersey, school system, for example, will lose 93 percent of the Federal funds it used to carry out a voluntary desegregation program and foresees the program's "impending demise." *Education Week*, Jan. 19, 1982, pp. 1, 17.

- Resources for the Department of Education's Office for Civil Rights have been reduced, constraining activities that prevent and resolve major civil rights problems, notably compliance reviews to investigate apparently serious and widespread denials of equal educational opportunity and technical assistance to promote voluntary compliance.[51] The current operating plan of the Office for Civil Rights adopts a more passive role, leaving victims of systemic discrimination less protected.[52] A smaller budget has been proposed for civil rights enforcement in education next year.[53]

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[48] Pub. L. No. 97-35, §587(a)(1), 95 Stat. 480 (1981).

[49] For a discussion of the usefulness of pre-grant reviews formerly required under the Emergency School Aid Act, Pub. L. 95-561 §606(c)(4), 92 Stat. 2257 (1978), *see*, *To Ensure Equal Educational Opportunity*, pp. 96-97. For our concerns about eliminating pre-grant reviews, *see*, U.S., Commission on Civil Rights, Staff Comments on Proposed Rule (Affirmative Action Requirements for Government Contractors) (issued by the Office of Federal Contract Compliance Programs, Department of Labor), Oct. 26, 1981, pp. 1-2.

[50] Pub. L. No. 97-35 §§585(a), 591(b), 95 Stat. 477, 480 (1981). *Compare*, *e.g.*: Pub. L. No. 95-561 §1249, 92 Stat. 2355 (1978). For a discussion of the civil rights problems in block grant programs without these safeguards, *see*, *Civil Rights Statement*, pp. 108-16.

[51] *Compare* 46 Fed. Reg. 5036-39 (1981) (Office for Civil Rights operating plan for fiscal year 1981) with 46 Fed. Reg. 47810-13 (1981) (Office for Civil Rights proposed operating plan for fiscal year 1982).

8. The Secretary of Education has made public statements undermining the Office for Civil Rights and its enforcement mission.[54] Such manifest lack of support for Federal enforcement of equal educational opportunity will, we believe, weaken incentives for voluntary compliance and the ability of the Office for Civil Rights to negotiate satisfactory remedial plans.[55]

Some efforts by the Department of Education to weaken civil rights protections have been blocked, at least temporarily, because the Department of Justice found them to be inconsistent with the law. They, nevertheless, concern us because they show that the Secretary of Education means, as he said, to test the legal limits of his authority to withdraw from civil rights enforcement.[56]

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[52] For our view that the Office for Civil Rights will not be able to conduct an effective enforcement program without more resources for compliance reviews and other activities it can target on major civil rights problems, *see*, U.S., Commission on Civil Rights, Staff Comments on Annual Operating Plan for Fiscal Year 1982 Proposed by the Office for Civil Rights, Department of Education, Nov. 16, 1981, pp. 1-3, 7-9.

[53] *See*, Office of Management and Budget, Executive Office of the President, Budget of the United States Government, Fiscal Year 1983, Appendix, p. I-V46.

[54] *See*, for example, Department of Education, press release, April 20, 1981, in which the Secretary of Education announced a new negotiation procedure because current procedure used by the Office for Civil Rights made schools feel "it was Federal policy to shoot first and ask questions later." For a further expression of the Secretary's opposition to Federal civil rights enforcement in education, *see*, Terrel H. Bell, Secretary of Education, letter to Paul Laxalt, U.S. Senate, April 24, 1981 (hereafter cited as Department of Education Civil Rights Policy letter), confiding the Secretary's view that there are some civil rights laws "we should not have, and my obligation to enforce them is against my own philosophy."

[55] We found that in the past the Office for Civil Rights did not negotiate plans to achieve full civil rights compliance when it and school officials knew there would be no sanctions for noncompliance. *See*, *To Ensure Equal Educational Opportunity*, p. 303 and n. 851.

- The Department of Education tried to reduce its Title IX protections against sex discrimination in employment and thereby halt a Supreme Court review that could hold it responsible for enforcing them. In July, the Secretary of Education asked the Attorney General to approve a proposal limiting the Department's Title IX rules that generally prohibit sex discriminatory employment practices in assisted schools and to instruct the Solicitor General to end the Government's defense of those rules.[57] Finding the proposal inconsistent with Congressional intent, the Department of Justice would not approve it.[58] The Department of Education has indicated that it will try again to limit its Title IX employment rules if the Supreme Court leaves coverage to its discretion.[59] The changes it seeks would reduce protections against employment discrimination for well over 3 million women educators and limit the Federal Government's enforcement tools.[60]

- The Department of Education tried to exempt from all its civil rights requirements over 3,500 postsecondary institutions assisted by Federal student aid,[61] again to prevent a court ruling

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56. Department of Education Civil Rights Policy letter.

57. Terrel H. Bell, Secretary of Education, letter to Attorney General William French Smith, July 27, 1981. The case is North Haven Bd. of Educ. v. Bell, 629 F. 2d 773 (2d Cir. 1980), *cert. granted*, 101 S. Ct. 3141 (Feb. 23, 1981).

58. Brief for Federal Respondents, *Id.*

59. *Id.* at 37, n. 26. For our views on the need for full Title IX coverage and Department of Education efforts to preempt court interpretations of Title IX, *see*, for example, Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letters to Terrel H. Bell, Secretary of Education, Aug. 3, 1981 and Attorney General William French Smith, Aug. 6, 1981.

60. For our analysis of the effects of a similar legislative proposal, *see*, S. 1361 Comments.

61. Department of Education estimate, cited in *Education Daily*, Jan. 12, 1982, p. 5.

that may uphold its enforcement responsibilities. In an effort to moot the Third Circuit's review of the Department of Education's Title IX enforcement authority,[62] the Secretary of Education last September submitted for Department of Justice approval a proposal to cease counting some types of Federal student aid as Federal assistance for the purposes of civil rights coverage,[63] even though court rulings hold that schools are assisted by such aid.[64] Although the Department of Justice found this proposal also contrary to law,[65] the Department of Education pursued it nonetheless.[66] When the White House rejected the proposal, the Secretary of Education announced he might resubmit a modified version.[67]

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[62] The case is Grove City College v. Harris, 500 F. Supp. 253 (W.D. Pa. 1980), appeal pending, Nos. 80-2383; 2384 (3rd Cir.).

[63] Department of Education, Office for Civil Rights, Draft Notice of Proposed Rulemaking for revision of 34 C.F.R. Parts 100, 104, 106 (Sept. 8, 1981). Specifically, guaranteed student loans, parent (auxiliary) loans, and Pell grants not disbursed by institutions no longer would have been considered assistance to education programs and activities. Id. at 2.

[64] See, Bob Jones University v. Johnson, 396 F. Supp. 597 (D.S.C. 1974), aff'd per curiam, 529, F. 2d 514 (4th Cir. 1975).

[65] Department of Justice, Civil Rights Division, General Counsel staff memorandum, undated; Daniel Oliver, General Counsel, Department of Education, memorandum to the Secretary, Dec. 2, 1981 (hereafter cited as Oliver Financial Assistance memorandum).

[66] The Department of Education's General Counsel recommended they pursue the proposal, despite Justice's determination on the law, because they could make "a political point" outweighing "the damage the Administration might sustain by seeming to pull back on supporting the civil rights of minorities." Oliver Financial Assistance memorandum, pp. 1-2.

[67] Interview, quoted in Washington Post, Jan. 15, 1982, p. A-13.

Finally, this Commission is deeply concerned by pending Executive branch initiatives that threaten Federal civil rights enforcement in education.

- The Administration has included in its 1983 budget a plan to reorganize the Department of Education that would end Federal leadership in promoting equal educational opportunity and jeopardize Federal civil rights enforcement.[68] The plan would consolidate programs now designed to benefit victims of discrimination into block grants and eventually turn them over to the States.[69] This approach would give States full discretion to eliminate equal educational opportunity requirements, including nondiscrimination requirements like Title VI. The plan also would transfer some responsibilities for enforcing equal educational opportunity to agencies, such as the Treasury Department, that do not adequately fulfill the civil rights responsibilities they already have[70] and provide no guarantee that agencies' resources would be increased to handle their increased enforcement responsibilities. The draft bill to authorize this reorganization would make no adequate provision for civil rights enforcement in the programs remaining with the foundation that would replace the Education Department. It would eliminate the Office for Civil Rights without establishing another unit to carry out civil rights responsibilities[71] and would not specifically authorize investigative activities.[72] The Department of Justice would become responsible for enforcing civil rights in cases where schools refused to correct violations voluntarily,[73] but Justice would not be required, and the new foundation would not have clear authority, to conduct activities to identify violations. The draft bill would impose other limits on civil rights enforcement in education as well.[74]

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[68] U.S., Office of Management and Budget, Executive Office of the President, Major Themes and Additional Budget Details, Fiscal Year 1983, pp. 241, 253-55.

[69] Ibid; U.S., Department of Education, A Proposal for a Foundation for Education (a working paper, December 1981), pp. 3-4.

[70] For our findings on failures to enforce civil rights in General Revenue Sharing programs, see U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort—1974, vol. IV, To Provide Fiscal Assistance (February 1975) and Making Civil Rights Sense Out of Revenue Sharing Dollars (February 1975), pp. 56-69. For more recent views on civil rights enforcement problems in General Revenue Sharing, see, William L. Taylor, Director, Center for National Policy Review, testimony before the Subcomm. on Intergovernmental Relations and Human Resources of the House Government Operations Comm., March 26, 1980, pp. 8-9.

- The Department of Justice is considering changing Title IX policy to enforce equal educational opportunity for women only in directly assisted programs,[75] such as student aid programs, rather than in all the programs of schools receiving Federal funds,[76] including intercollegiate athletics and the many vocational and professional education programs assisted only by funds earmarked for other purposes. The new interpretation of Title IX coverage would leave a minimal patchwork of protections against sex discrimination in education, permit substantial Federal support for discriminatory activities, and intensify the compliance and enforcement

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[71] Department of Education draft bill, "Foundation for Education Assistance Act," Jan. 12, 1982, §202, 303(a)(2). The Office of Management and Budget has circulated this bill to agencies that would be affected by it. As of February 12, the Administration had sent no bill to Congress.

[72] *Id*. §203.

[73] *Id*. §302.

[74] For example, it would prohibit the new foundation from providing school districts with assistance for transportation, even on a voluntary basis, to overcome racial imbalance. *Id*. §423. It also would prohibit the enforcement of goals for integrating postsecondary student enrollments. *Id*. §426(b). The capacity of the new foundation to issue civil rights regulations would be severely limited. *Id*. §413.

[75] Rex E. Lee, Solicitor General of the United States, oral arguments before the Supreme Court in North Haven Bd. of Educ. v. Bell, Dec. 9, 1981 and interview, quoted in *Education Daily*, Dec. 10, 1981.

[76] *See*, 34 C.F.R. §106.11 (1980) (regulation defining the scope of Title IX coverage).

> problems created by block grants.[77] Such a change in Title IX policy could foreshadow a review of the Title VI policies enforced by over 30 Federal agencies.

Title VI, Title IX, and the policies developed and enforced to carry out their nondiscrimination requirements are landmarks in the recent progress toward undoing a legacy of discrimination tolerated, even imposed, by State and local governments. Through them, the Federal Government strengthened and extended the constitutional guarantees of equal educational opportunity established by *Brown* v. *Board of Education*[78] and subsequent rulings by the Supreme Court of the United States.[79] Congressional and Executive branch initiatives to dismantle the essential Federal civil rights effort in education threaten to reverse more than a generation of progress toward equal educational opportunity and strip our Nation's young people of the protections they must have if they are to be assured an equal chance in education and, ultimately, employment. We urge you to halt this abandonment of Federal civil rights leadership and commit your Administration to carrying on the effort to banish illegal discrimination from this Nation's schools.

Respectfully,

FOR THE COMMISSIONERS

ARTHUR S. FLEMMING
Chairman

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[77] For our analysis of the effects of restricting civil rights enforcement to directly assisted programs, *see*, S. 1361 Comments, p. 15-23.

[78] 347 U.S. 483 (1954).

[79] *See*, *e.g.*, Griffin v. County School Bd., 377 U.S. 218 (1964); Green v. County School Bd., 391 U.S. 430 (1968); Alexander v. Holmes County Bd. of Educ., 396 U.S. 19 (1969); Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. 1 (1971); Keyes v. School Dist. No. 1, 413 U.S. 189 (1973); Lau v. Nichols, 414 U.S. 563 (1974); Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979); Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979) (Dayton II).

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

August 10, 1982

Honorable William French Smith
Attorney General
Washington, D.C. 20503

Dear Mr. Attorney General:

I am writing to express Commission concerns raised by the recent district court ruling in University of Richmond v. Bell, No. 81-0406-R (E.D. Va. 1982). The theories adopted in this ruling contradict the interpretation of civil rights laws and departmental enforcement authority embodied in existing regulations. We have been informed that these regulations are under review. We, therefore, want to offer our view that the Richmond court's theories, if accepted as proper limits, would decimate civil rights protections in education and undermine the broad remedial purposes of Title IX of the Education Amendments of 1972. They also would jeopardize protections under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

The court ruled that the Department of Education could not enforce Title IX in an intercollegiate athletics program receiving no direct Federal financial assistance. This in itself is cause for concern because it would permit sex discrimination in the many athletics programs that, while not directly targeted by Federal funds, nonetheless receive and benefit from Federal aid. Our 1980 report More Hurdles to Clear concluded that vigorous Title IX enforcement would be necessary to ensure women and girls equal opportunity in sports. Such enforcement would be severely restricted if Federal agencies and victims of discrimination no longer could seek Title IX compliance on the basis of such benefits as recruitment advantages accruing from Federal student aid and accommodations built with Federal funds.

The courts's ruling, however, reaches far beyond sex discrimination prohibitions in athletics. First, it would narrow the definition of "Federal financial assistance" so that Federal student grants and loans no longer would confer civil rights obligations on the schools students attend. We believe, as the Commission testified before the House Education and Labor Subcommittee on Postsecondary Education in April 1982, that Congress intended civil rights laws to prevent Federal support for discrimination and that Federal student aid is a significant form of institutional support. The Richmond ruling, in our view, flies in the face of legislative history, judicial precedent, and practical experience recounted in our testimony. It also is inconsistent with long-standing Federal policy substantially reaffirmed over the last year by the Department of Justice.

The ruling further would restrict Title IX coverage to education programs and activities that directly receive Federal funds "specifically earmarked" for them. It thus would roll back protections against sex discrimination in all programs assisted or benefited by the Federal funds other programs receive. This might include all local education programs assisted under the Education Consolidation and Improvement Act of 1981 because they will receive Federal funds through State education agencies, not directly. As staff comments on proposals to implement the act indicate, we share the view of the Departments of Education and Justice that civil rights requirements extend to the ultimate recipients of block grant funds.

The "earmarking" restriction could lift Title IX requirements even from many education programs that directly receive Federal aid because funds earmarked for other purposes often provide assistance. For example, programs may use Federal research funds to purchase equipment not restricted to project uses. Further, many postsecondary institutions may use 50 percent or more of funds granted for research to cover the overhead and general operating costs of their programs. Under the Richmond court's approach, these programs, although recipients of Federal financial assistance, apparently no longer would be covered by Title IX. Indeed, according to the Project on the Status and Education of Women, such a restrictive approach could leave as little as 4 percent of this year's authorized Department of Education funds for higher education still tied to Title IX obligations.

Staff analyzed the same basic theory of coverage this ruling adopts in September 1981 comments on a bill to amend Title IX, now withdrawn, and concluded it could involve substantial Federal support for sex discriminatory activities, implicate Federal agencies in constitutional violations, and make residual Title IX protections very difficult to enforce. The sweeping language of the ruling could reach Title VI and Section 504. If so interpreted, the same basic conclusions would apply.

The ruling is yet more far-reaching because it would curb the Department of Education's authority to investigate, rather than just its ultimate authority to enforce. The ruling enjoins the Department from investigating civil rights violations in any program or activity within the court's jurisdiction "absent a prior showing that such said program or activity is the recipient of direct federal financial assistance." The Department often must make inquiries, however, before it can determine whether Federal assistance flows to a program or activity where discrimination is alleged. Such inquiries, we believe, will be essential to identify programs assisted under the Education Consolidation and Improvement Act because the Department will not have complete records showing where State agencies allocate or how local agencies use their block grant funds. Civil rights enforcement in education thus often will be deterred from the start if the Department has to prove its jurisdiction before collecting any evidence.

Further, the ruling would prevent the Department from investigating discriminatory practices in an unassisted program to determine whether they "infect" assisted programs. This would restrict the Department's ability to identify links between discriminatory and federally-supported activities. The court's restrictions contradict the elementary principle of administrative law that agencies do not have to prove they have jurisdiction before investigating to determine their jurisdiction. The ruling here is all the more troublesome because it relies on *Board of Public Instruction of Taylor County, Florida* v. *Finch*, a Title VI case. As a result, its illogical restrictions on investigations could undermine the Department's authority to combat race, as well as sex, discrimination.

Title IX was intended, in the words of its sponsor, as a "comprehensive amendment" banning sex discrimination in "all facets of education ... with limited exceptions." The theories adopted in the *Richmond* opinion would invert congressional intent, making protections against sex discrimination in education the exception and Federal support unconditioned by Title IX compliance the rule. Moreover, they would jeopardize Title VI and Section 504 coverage and impair enforcement of all civil rights laws under the Department of Education's jurisdiction. We have opposed these theories in other contexts and are gravely concerned they may be established through litigation.

We continue to follow with interest the regulatory and litigation policies pursued by the Department of Justice. We, therefore, ask you to inform us what response will be made to the *Richmond* ruling. We also would like to know the Department's specific position on the various issues it raises, including civil rights coverage under the Guaranteed Student Loan program. The Assistant Attorney General for Civil Rights has not yet responded to staff's April 2, 1982 request for the Department's position on this particular issue. A similar inquiry is being sent to the Secretary of Education.

Sincerely,

CLARENCE M. PENDLETON, JR.
Chairman

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

August 10, 1982

Honorable Terrel H. Bell
Secretary of Education
Washington, D.C. 20202

Dear Mr. Secretary:

I am writing to express Commission concerns raised by the recent district court ruling in *University of Richmond* v. *Bell*, No. 81-0406-R (E.D. Va. 1982). The theories adopted in this ruling contradict the interpretation of civil rights laws and departmental enforcement authority embodied in existing regulations. You have informed us that these regulations are under review. We, therefore, want to offer our view that the *Richmond* court's theories, if accepted as proper limits, would decimate civil rights protections in education and undermine the broad remedial purposes of Title IX of the Education Amendments of 1972. They also would jeopardize protections under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

The court ruled that the Department of Education could not enforce Title IX in an intercollegiate athletics program receiving no direct Federal financial assistance. This in itself is cause for concern because it would permit sex discrimination in the many athletics programs that, while not directly targeted by Federal funds, nonetheless receive and benefit from Federal aid. Our 1980 report *More Hurdles to Clear* concluded that vigorous Title IX enforcement would be necessary to ensure women and girls equal opportunity in sports. Such enforcement would be severely restricted if Federal agencies and victims of discrimination no longer could seek Title IX compliance on the basis of such benefits as recruitment advantages accruing from Federal student aid and accommodations built with Federal funds.

The courts's ruling, however, reaches far beyond sex discrimination prohibitions in athletics. First, it would narrow the definition of "Federal financial assistance" so that Federal student grants and loans no longer would confer civil rights obligations on the schools students attend. We believe, as the Commission testified before the House Education and Labor Subcommittee on Postsecondary Education in April 1982, that Congress intended civil rights laws to prevent Federal support for discrimination and that Federal student aid is a significant form of institutional support. The *Richmond* ruling, in our view, flies in the face of legislative history, judicial precedent, and practical experience recounted in our testimony. It also is inconsistent with long-standing Federal policy substantially reaffirmed over the last year by the Department of Justice.

The ruling further would restrict Title IX coverage to education programs and activities that directly receive Federal funds "specifically earmarked" for them. It thus would roll back protections against sex discrimination in all programs assisted or benefited by the Federal funds other programs receive. This might include all local education programs assisted under the Education Consolidation and Improvement Act of 1981 because they will receive Federal funds through State education agencies, not directly. As staff comments on proposals to implement the act indicate, we share your view that civil rights requirements extend to the ultimate recipients of block grant funds.

The "earmarking" restriction could lift Title IX requirements even from many education programs that directly receive Federal aid because funds earmarked for other purposes often provide assistance. For example, programs may use Federal research funds to purchase equipment not restricted to project uses. Further, many postsecondary institutions may use 50 percent or more of funds granted for research to cover the overhead and general operating costs of their programs. Under the Richmond court's approach, these programs, although recipients of Federal financial assistance, apparently no longer would be covered by Title IX. Indeed, according to the Project on the Status and Education of Women, such a restrictive approach could leave as little as 4 percent of this year's authorized Department of Education funds for higher education still tied to Title IX obligations.

Staff analyzed the same basic theory of coverage this ruling adopts in September 1981 comments on a bill to amend Title IX, now withdrawn, and concluded it could involve substantial Federal support for sex discriminatory activities, implicate Federal agencies in constitutional violations, and make residual Title IX protections very difficult to enforce. The sweeping language of the ruling could reach Title VI and Section 504. If so interpreted, the same basic conclusions would apply.

The ruling is yet more far-reaching because it would curb the Department's authority to investigate, rather than just its ultimate authority to enforce. The ruling enjoins the Department from investigating civil rights violations in any program or activity within the court's jurisdiction "absent a prior showing that such said program or activity is the recipient of direct federal financial assistance." The Department often must make inquiries, however, before it can determine whether Federal assistance flows to a program or activity where discrimination is alleged. Such inquiries, we believe, will be essential to identify programs assisted under the Education Consolidation and Improvement Act because the Department will not have complete records showing where State agencies allocate or how local agencies use their block grant funds. Civil rights enforcement in education thus often will be deterred from the start if the Department has to prove its jurisdiction before collecting any evidence.

Further, the ruling would prevent the Department from investigating discriminatory practices in an unassisted program to determine whether they "infect" assisted programs. This would restrict the Department's ability to identify links between discriminatory and federally-supported activities. The court's restrictions contradict the elementary principle of administrative law that agencies do not have to prove they have jurisdiction before investigating to determine their jurisdiction. The ruling here is all the more troublesome because it relies on Board of Public Instruction of Taylor County, Florida v. Finch, a Title VI case. As a result, its illogical restrictions on investigations could undermine the Department's authority to combat race, as well as sex, discrimination.

Title IX was intended, in the words of its sponsor, as a "comprehensive amendment" banning sex discrimination in "all facets of education ... with limited exceptions." The theories adopted in the Richmond opinion would invert congressional intent, making protections against sex discrimination in education the exception and Federal support unconditioned by Title IX compliance the rule. Moreover, they would jeopardize Title VI and Section 504 coverage and impair enforcement of all civil rights laws under the Department's jurisdiction. We have opposed these theories in other contexts and are gravely concerned they may be established through litigation.

We continue to follow with interest the regulatory and litigation policies pursued by the Department of Education. We, therefore, ask you to inform us what response will be made to the Richmond ruling. We also would like to know the Department's specific position on the various issues it raises. A similar inquiry is being sent to the Attorney General.

Sincerely,

CLARENCE M. PENDLETON, JR.
Chairman

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

September 16, 1982

Mr. Clarence M. Pendleton, Jr.
Chairman
U.S. Commission on Civil Rights
Washington, D. C. 20425

Dear Penny:

Out of an abundance of caution, the Attorney General has determined that, because of his prior membership on the Board of Regents of the University of California, he should recuse himself from participation in the *University of Richmond* case. I have, therefore, been asked to respond to your August 10 letter inquiring about a possible appeal from the *Richmond* decision.

As you know, the Department of Education (DOEd) and the Department of Justice (DOJ) agreed not to seek appellate review of Judge Warriner's ruling that DOEd lacked authority under Title IX of the Educational Amendments Act of 1972, and its implementing regulations, to investigate Richmond's athletic program. In reaching this conclusion, the views set forth in your August 10 letter were fully considered. While we found ourselves in disagreement with your recommended course of action on this occasion, the wise counsel of the Civil Rights Commission is always valued and we trust that you will continue to share your thoughts and analysis with us on future issues of similar importance.

In *Richmond*, we were guided principally by the particulars of the case before us and Judge Warriner's application of existing law to the stipulated facts. The University's athletic program admittedly received no direct federal financial assistance. Nor did DOEd seek to initiate its investigation on the claim that the athletic program was receiving federal funding indirectly. Rather, the jurisdictional nexus for sending federal agents onto Richmond's campus was tied soley to the fact that the University received federal funds through student financial aid programs (i.e., Basic Educational Opportunity Grants; Supplementary Educational Opportunity Grants; Student Worker Wages; Guaranteed Student Loans) and through a single Library Grant.

The position advanced by the then director of DOEd's Office of Civil Rights, and rejected by the district court, was that receipt by Richmond students of even a single dollar of federal funds is sufficient to subject all of the University's programs and activities to Title IX scrutiny -- even those programs and activities that receive no federal funds. This interpretation of the statute effectively removes from Title IX the "program specificity" feature that was recognized as an essential component of the legislation in the Supreme Court's decision last Term in North Haven Board of Education v. Bell, 50 U.S.L.W. 4501 (1982). As there stated: "an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§ 901 and 902. 50 U.S.L.W. at 4507.

In light of the clear language of Sections 901 and 902, the accompanying legislative history, and the Supreme Court's recent pronouncement of the intended scope of Title IX coverage, we found Judge Warriner's opinion to be both analytically and legally sound. Its conclusion that only those University programs and activities shown to be recipients of federal funds are within the reach of Title IX is fully consistent with the better reasoned judicial precedents in the area. See Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981); Bennett v. West Texas State University, No. 280-0073-F (N.D. Tex., July 27, 1981); Othen v. Ann Arbor School Board, 507 F. Supp. 1376 (E.D. Mich. 1981).

On this last point, the two recent Third Circuit decisions to the contrary have neither been ignored nor lightly dismissed. See Grove City Community College v. Bell, No. 81-0406 (July 8, 1982); Haffer v. Temple University, No. 82-1049 (September 7, 1982). Dictum in Grove City, which another Third Circuit panel considered to be controlling in Temple, states that the University as a whole can be considered the "program" for purposes of Title IX coverage once at least one dollar of federal educational funds goes to any student enrolled at the school. In seeking to ascertain from the statute's language and history whether or not Congress intended so expansive an interpretation of the phrase "program or activity," we were satisfied that Judge Warriner's opinion in Richmond had the best of it. Accordingly, there was, in the opinion of both DOEd and DOJ, no cause for an appeal of Richmond to the Fourth Circuit.

I would in closing add only that this "no appeal" decision suggests no retrenchment of our enforcement responsibilities under Title IX -- as some in the political arena have been quick to assert. The *Richmond* opinion in no way tolerates sex discrimination in federally funded programs; nor does it allow DOEd to ignore its Title IX investigatory responsibilities upon receipt of a complaint containing factual allegations of sex bias in a directly aided program. Moreover, if gender-based discriminatory behavior so pervades a nonfunded program that it "infects" a funded program, we read Judge Warriner's opinion as recognizing a DOEd investigatory responsibility in such circumstances.

It is primarily in this respect that we had some differences with your August 10 letter. The "far-reaching" implications that you hypothesized might perhaps flow from the *Richmond* ruling do not, as we read the opinion, follow from the program-specific analysis used by the district court. That DOEd must make a showing that the program or activity to be investigated is indeed a recipient of federal funds seems to us to be neither inappropriate nor unduly burdensome.

I hope that the above discussion satisfactorily explains our decision not to appeal the *Richmond* decision. If you have further questions, we can perhaps further discuss this matter on your next trip to Washington.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: John Hope III

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

SEP 3 0 1982

Honorable William Bradford Reynolds, III
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Reynolds:

Thank you for your letter of September 16, 1982 explaining the decision not to appeal the Federal district court ruling in University of Richmond v. Bell, No. 81-0406-R (E.D. Va. Jul, 8, 1982). We appreciate learning the Justice Department's reasoning in this decision. After studying it carefully, however, we cannot agree that the Richmond opinion is so "analytically and legally sound" as to leave no good grounds for -- defending the broad interpretation of civil rights laws the Government has maintained in existing regulations and successfully argued in the courts. Nor do we agree the opinion "in no way tolerates sex discrimination in federally funded programs." Rather, we believe the Department's view, rejecting the contrary theories adopted in Crove City College v. Bell, No. 80-2383, 2384 (3d Cir. Aug. 12, 1982), represents a sharp reversal of long-standing Federal policy which, if pursued, will reduce civil rights protections in education significantly.

According to your letter, the position advanced by the Department of Education's Office for Civil Rights was that receipt of a single Federal dollar by University of Richmond students brought all the university's programs and activities under Title IX of the Education Amendments of 1972. You suggest the district court correctly rejected this position as inconsistent with the "program specific" nature of Title IX recognized by the Supreme Court in North Haven Board of Education v. Bell, ___ U.S. ___, 102 S. Ct. 1912 (1982). We agree that North Haven apparently rules out an institutional approach to Title IX coverage. This approach, however, was not the Government policy rejected by the district court in Richmond.

That policy, codified in the Department of Education's Title IX regulations, 34 C.F.R. §106.2. has counted Federal student aid as "Federal financial assistance" for the purposes of Title IX coverage and applied Title IX requirements to any education program or activity that "receives or benefits" from Federal funds. North Haven, as you know, cited the latter provision in an approving context, 102 S. Ct. at 1927, suggesting it is not inconsistent with "program specificity."

Your letter says the Richmond court, following North Haven, ruled that "only those University programs and activities shown to be recipients of federal funds are within the reach of Title IX." The decision to accept the ruling would be less troublesome if it actually read this way. The court, in fact, restricted Title IX coverage to education programs and activities that directly receive Federal funds specifically earmarked for them. This is much more stringent "program specificity" than we find in North Haven.

The Richmond interpretation would lift Title IX requirements from programs receiving assistance through or benefiting from Federal aid to other recipients. As your letter indicates, it specifically would exempt from Title IX requirements programs assisted by Federal student aid funds. It similarly could reduce coverage under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, since the court said such funds were "not really 'federal assistance.'" This, as noted, contradicts Federal regulatory policy upheld in Bob Jones University v. Johnson, 529 F.2d 514 (4th Cir. 1975) and, very recently, in Grove City. Calling the ruling "legally sound," despite these precedents, suggests the Government has decided to stop enforcing civil rights obligations conferred by Federal student aid.

More generally, the Richmond interpretation would roll back Federal protections against sex discrimination from programs receiving any indirect assistance and also from programs directly assisted by funds authorized for other purposes, such as Federal research grants. As our August 10, 1982 letter noted, this could include all local education programs assisted under the Education Consolidation and Improvement Act because they receive Federal funds through State agencies, not directly. We also noted it could leave as little as 4 percent of this year's authorized Department of Education higher education funds still tied to Title IX obligations. In endorsing the Richmond ruling with these consequences presented, your letter implies a profound break with the civil rights policies pursued by every administration since nondiscrimination requirements for federally-assisted programs were enacted.

The decision not to appeal Richmond thus has far-reaching implications. As your explanation shows, it means the Administration now has adopted a highly restrictive theory of civil rights coverage. North Haven does not compel this policy change, and other higher court rulings support a broad reading of civil rights laws. In addition to Grove City and Haffer v. Temple University, No. 82-1049 (3d Cir. Sept. 7, 1982), these include Cannon v. University of Chicago, 441 U.S. 677, 704 (1979). In Cannon the Supreme Court stated:

> Title IX, like its model Title VI, sought to accomplish two related, but nevertheless somewhat different, objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices.

Both these objectives are frustrated by the theory your letter espouses.

The Department soon will have other opportunities to address the major issues in *Richmond*, including a brief due on October 4 in *Iron Arrow Honor Society* v. *Hufstedler*, 499 F. Supp. 496 (S.D. Fla. 1980) *aff'd* 652 F.2d 454 (5th Cir. 1981), *judgment vacated and remanded sub nom. Iron Arrow Honor Society* v. *Schweiker*, ___ U.S. ___, 102 S. Ct. 3475 (1982), and a probable appeal in *Grove City*. We again urge that your decisions in these cases repudiate the policies reflected in *Richmond* and reaffirm the Federal Government's commitment to interpretations consistent with the broad remedial purposes of civil rights laws.

Sincerely,

FOR THE COMMISSIONERS

CLARENCE M. PENDLETON, JR.
Chairman

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

October 5, 1982

Mr. Clarence M. Pendleton, Jr.
Chairman
U.S. Commission on Civil Rights
Washington, D. C. 20425

Dear Penny:

Thank you for your letter of September 30, 1982, in which you share further with me your thoughts regarding the decision of the Government not to take an appeal in *University of Richmond* v. *Bell*, No. 81-0406-R (E.D. Va. July 8, 1982).

It is perhaps a bit unfortunate that the discussion regarding "program specificity" under Title IX is being shaped by the recent *Richmond* decision and the decision in *Grove City College* v. *Bell*, No. 80-2383 (3d Cir. Aug. 12, 1982), since these two rulings deal with the issue from opposite ends of the spectrum. As a consequence, most of the debate has concentrated on a recounting of presupposed "dire consequences" that might flow from adopting one position or the other; very little attention has been paid to hard legal analysis.

The central question to be decided, of course, is what Congress had in mind in using in Title IX the phrase "education program or activity." The Supreme Court in *North Haven Board of Education* v. *Bell*, ____ U.S. ____, 102 S. Ct. 1912 (1982), indicated clearly that the phrase was intended as more than mere window dressing, and the Court's vacation and remand in *Iron Arrow Honor Society* v. *Bell*, ____ U.S. ____, 102 S. Ct. 3475 (1982), suggested at least some disagreement with the Fifth Circuit's handling of the issue in that case.

Recognition of these events obviously does not decide the question, but it does help better to frame it. But for the Third Circuit's recent nod to an institutional approach to Title IX coverage in *Grove City* and *Haffer* v. *Temple University*, No. 82-1049 (3d Cir. Sept. 7, 1982) -- an approach that you have acknowledged appears to have been "ruled out" by the Supreme Court in North Haven -- the weight of authority has sided with an interpretation of "education program or activity" that gives the phrase considerable vitality. See Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981); Bennett v. West Texas State University, No. 280-0073-f (N.D. Tex., July 27, 1981); Othen v. Ann Arbor School Board, 507 F. Supp. 1376 (E.D. Mich. 1981). Similar treatment of the issue can be found in decisions dealing with essentially the same language in Title VI. Board of Public Instruction v. Finch, 414 F.2d 1068 (5th Cir. 1969); Mandel v. HEW, 411 F. Supp. 542 (D. Md. 1976), aff'd en banc by equally divided court, sub nom. Mayor and City Council of Baltimore v. Matthews, 571 F.2d 1273 (4th Cir.), cert. denied, 439 U.S. 862 (1978); Stewart v. New York University, 430 F. Supp. 1305 (S.D. N.Y. 1976). And it has gained recognition as well in the context of Section 504 of the Rehabilitation Act. Simpson v. Reynolds Metal, 629 F.2d 1226 (7th Cir. 1980).

It was on the basis of that judicial authority, and a careful analysis of the statutory language and its legislative history, that both the Department of Education and the Department of Justice determined not to take an appeal in Richmond in light of the particular facts of record in that case. While I appreciate your continuing reservations about that decision, I do not believe it is nearly as foreboding as your September 30 letter seems to suggest.

We will, of course, continue to consider the question of Title IX coverage in the particular contexts presented in future cases, with every attention to the concerns you raise. Let me assure you that no decision will be made here that does disservice to the Congressional mandate embodied in Title IX of the Educational Amendments of 1972 or that fails in any respect to enforce the individual rights protected by that mandate.

Sincerely,

Wm. Bradford Reynolds

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

UNITED STATES COMMISSION ON CIVIL RIGHTS
Washington, D. C. 20425

December 2, 1982

Honorable Terrel H. Bell
Secretary of Education
Washington, D.C. 20202

Dear Mr. Secretary:

As you may know, the Commission has been following legal developments affecting civil rights enforcement in education. Last January, for example, we commented on the change in Federal policy denying tax exemptions to racially discriminatory private schools. We also have commented on several cases seeking to limit the Education Department's enforcement authority under Title IX of the Education Amendments of 1972, including University of Richmond v. Bell, 534 F. Supp. 321 (E.D. Va. 1982). We are continuing to study the implications of these and related cases.

We, therefore, would appreciate your cooperation in providing us with the Department's interpretation of its civil rights enforcement authority. We are interested in how the Department currently views its authority both nationwide and in specific geographical areas covered by relevant Federal district and appellate court rulings. Specifically, we would like to know whether, as a matter of national enforcement policy, the Department believes that:

- Federal student aid, including both student grants and guaranteed loans, constitutes Federal financial assistance for the purposes of Title IX enforcement?
- The Department can enforce its Title IX regulations in all the components and functions of an education institution receiving Federal student aid except those that have entirely separate, non-Federal funding sources?
- The Department can enforce its Title IX regulations in all the components and functions of an education institution, except those with entirely separate, non-Federal funding sources, when the institution receives other Federal funds not earmarked for a specific program—for example, monies for indirect costs included in Federal research grants?

- Under Title IX, an "education program" includes a complex of all interdependent education components and functions, and all are covered by Title IX and the Department's regulations when any receives Federal aid insofar as such aid frees other funds that could be allocated to them?
- The Department may investigate possible Title IX violations in unassisted programs to determine whether they "infect" assisted programs?
- The Department may investigate possible Title IX violations without first establishing that the program in which they are alleged to occur receives Federal financial assistance?

If any of these questions is answered in the negative, please provide the Department's interpretations and their basis. That is, please explain the Department's alternative views of its Title IX enforcement authority in geographical areas not directly covered by limiting court rulings.

We also ask that you identify Federal court jurisdictions where the Department believes it currently cannot enforce its national Title IX policies and provide the Department's interpretation of its enforcement authority under each relevant ruling on the above points?

Finally, we would like to know whether the Department believes Title IX cases have limited in any way its authority to enforce Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabililation Act of 1973. If so, please identify the relevant cases and explain how the Department believes they apply to its authority under these laws.

We would appreciate copies of any generally-applicable guidelines or memoranda on civil rights enforcement issued by the Department or its Office for Civil Rights since January 1980 and would welcome your views on related issues.

It would be especially helpful to hear from you by the end of December so we might be in a position to consider your response early next year. Your staff may direct any questions about this request to Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, at 254-6701.

Sincerely,

FOR THE COMMISSIONERS

CLARENCE M. PENDLETON, JR.
Chairman

BEST COPY AVAILABLE

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

DEC 2 1982

Honorable William Bradford Reynolds, III
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Reynolds:

Thank you for your October 5, 1982 letter further explaining the Administration's decision not to appeal the Federal district court ruling in University of Richmond v. Bell, 534 F. Supp. 321 (E.D. Va. 1982). We are pleased to learn that the Justice Department will continue studying the issues involved and will consider our views in developing policy on future cases, including the brief for the Eleventh Circuit Court of Appeals now due on December 3 in Iron Arrow Honor Society v. Hufstedler, aff'd 652 F.2d 454 (5th Cir. 1981), judgment vacated and remanded sub nom. Iron Arrow Honor Society v. Schweiker, ___ U.S. ___, 102 S. Ct. 3475 (1982). That case, as you know, tests the Department of Education's authority under Title IX of the Education Amendments of 1972 to prohibit recipients of Federal funds, including the University of Miami, from supporting sex discriminatory activities such as the plaintiff all-male organization.

After carefully reviewing your latest letter, we remain concerned by the Department's continuing preference for legal interpretations narrowing long-standing Federal civil rights policies. We particularly are disturbed to see the recent appellate decisions in Grove City College v. Bell, 687 F.2d 684 (3d Cir. 1982), petition for cert. filed Nov. 9, 1982 (S. Ct. No. 82-792), and Haffer v. Temple University, 688 F.2d 14 (3d Cir. 1982) again minimized. In giving so little weight to these rulings and ignoring others cited in our September 30, 1982 letter, your letter suggests the Justice Department is building arguments against existing Federal civil rights protections. It, thus, increases our concern about the Government's position in Iron Arrow and other future actions.

Your letter states that the central question is congressional intent in using the phrase "education program or activity" in Title IX. Since the Supreme Court in North Haven Board of Education v. Bell, ___ U.S. ___, 102 S. Ct. 1912 (1982), deferred an answer, one will emerge only through proceedings in subsequent cases. The immediate issue in our view, therefore, is how the Justice Department, implementing Administration policy, will act to influence the outcome of the litigation process.

As our exchange of correspondence suggests, the Department has a range of opinions it may use to develop its position on the "program" question in Iron Arrow and other cases testing the scope of civil rights coverage. On the one hand, the rulings your letter accords "the weight of authority" could be used to argue that Title IX offers protections against sex discrimination only in the relatively few, scattered parts of education institutions directly targeted by Federal funds. On the other hand, other significant rulings, including Grove City, support the established Federal policy that Title IX covers all education programs receiving or benefiting from Federal funds and that, as the Government successfully argued in Iron Arrow, an entire institution is the "education program" specified in the law when it receives general assistance through Federal student aid. These opinions need not involve the institutional approach apparently ruled out in North Haven, as your letter suggests, because they provide for institution-wide coverage only insofar as the whole institution receives or benefits from Federal funds.

We believe these broad rulings have the greater weight. They give Title IX the sweep its remedial origins dictate, as North Haven requires, and accommodate the objectives Congress had in enacting the law. These objectives, as defined in Cannon v. University of Chicago, 441 U.S. 677, 704 (1979), were to "avoid the use of federal resources to support discriminatory practices" and provide individual citizens effective protections against those practices." As our September 30 letter stated, we believe the highly restrictive theories in some of the cases your letter cites approvingly would frustrate both these objectives. A reading of "education program or activity" that would pinpoint Title IX protections to a library here, a chemistry department there is inconsistent, we believe, with a law intended, in the words of its sponsor, to be "a strong and comprehensive measure" against "sex discrimination [that] reaches into all facets of education," 118 CONG. REC. 5803, 5806 (1972) (Remarks of Senator Bayh).

Furthermore, we believe Federal decisions on civil rights litigation involve more than the "hard legal analysis" to which you refer. These decisions emerge from a policy process in which the Government chooses whether it wants to pursue a broad jurisdiction offering maximum opportunities for relief from discrimination or accede to retrenchments in previous policy. This is the context in which we will view the positions the Department of Justice takes in Iron Arrow and other cases.

With respect to the pending case, we note that enforcement of existing Title IX policies led the University of Miami to adopt a nondiscrimination policy banning sex discriminatory activities, including the Iron Arrow Honor Society. The chancellor just reaffirmed this policy in a September 23, 1982 letter to Iron Arrow saying the university, contrary to its position during the trial, would not allow the all-male society back on campus even if the court ruled it could do so under Title IX. In these changed circumstances, the Department of Justice may decide the court's ruling no longer would have any practical effect. If the Department argues Iron Arrow is moot, we hope it clearly will state that this position implies no retreat from the substantive policies it successfully defended in the district and appellate courts.

We would appreciate learning the results of your review of Iron Arrow.

Sincerely,

FOR THE COMMISSIONERS

PENNY
CLARENCE M. PENDLETON, JR.
Chairman

UNITED STATES COMMISSION ON CIVIL RIGHTS
Washington, D. C. 20425

January 6, 1983

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Commission on Civil Rights urges you, at the earliest opportunity, to affirm your Administration's commitment to policies requiring equal opportunity in any education program directly or indirectly aided by Federal funds. Your prompt guidance is needed because the Administration soon may have to take a position on coverage under Title IX of the Education Amendments of 1972 before the Supreme Court of the United States in Grove City College v. Bell.

Recent court decisions have not provided definitive guidance on the extent of protections against sex discrimination in education under Title IX. The Administration, therefore, may choose to defend long-established policies affording women and men broad guarantees of equal educational opportunity or seek to narrow them. Its decision may affect not only Title IX, but vital protections against race and handicap discrimination under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

We are alarmed by indications that the Departments of Education and Justice are adopting narrow interpretations of the law. Both departments, for example, recently endorsed a very restrictive district court ruling, University of Richmond v. Bell, and chose not to ask for a rehearing of the restrictive appellate court ruling in Hillsdale College v. Department of Health, Education, and Welfare. We believe these courts' theories, if adopted nationwide, would allow substantial Federal support for sex discrimination and possibly race and handicap discrimination as well. Since these theories are not required by any definitive ruling, the departments' approval appears to be a policy choice in favor of reducing Federal civil rights guarantees.

There has been significant progress toward educational opportunity for women since Title IX was passed. Serious problems remain, however, which we do not believe will be resolved unless the Federal Government ensures that taxpayers' dollars in no way support discrimination. We, therefore, urge you to state your support for the broad Title IX policies Republican and Democratic administrations alike have pursued to carry out the remedial purposes of the law.

We would be pleased to share with you more detailed analyses of this pressing issue and would welcome the opportunity to discuss it with you directly.

Respectfully,

FOR THE COMMISSIONERS

CLARENCE M. PENDLETON, JR.
Chairman

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

ASSISTANT SECRETARY
FOR CIVIL RIGHTS

APR 6 1983

The Honorable Clarence M. Pendleton, Jr.
Chairman
United States Commission on
Civil Rights
Washington, D.C. 20425

Dear Mr. Chairman:

Since receipt of your December 2, 1982, letter to Secretary Bell, there have been many contacts between the staffs of the Office for Civil Rights (OCR) and the Civil Rights Commission, as well as correspondence from the Civil Rights Division of the Department of Justice.

In summary, it is the intention of the Department of Education and OCR to vigorously enforce Title IX of the Education Amendments of 1972, and all other civil rights statutes under which we have enforcement responsibility. It is our intention to enforce these statutes consistent with Congressional intent, as determined by the courts.

As you know, the issues raised in your letter and in subsequent conversations are presently under review by the Supreme Court. I believe that the Court's decision in Grove City v. Bell will provide authoritative responses to the questions you have posed concerning direct and indirect aid and whether financial aid to a college student constitutes aid to academic and athletic activities which do not receive direct Federal aid. If the Court consolidates the Hillsdale case with Grove City, I believe the resulting decision would likely provide answers to all the questions raised in your December 2 letter.

I look forward to the Supreme Court's resolution of these important issues. Until the Supreme Court has resolved these questions, this Department and OCR will follow the controlling decision in the jurisdiction where the case arises.

Sincerely,

Harry M. Singleton

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

April 12, 1983

The Honorable Clarence M. Pendleton, Jr.
Chairman
United States Commission on Civil Rights
Washington, D.C. 20425

Dear Chairman Pendleton:

I appreciate our telephone conversation of yesterday. This was followed up by a telephone discussion of our responses to requests from your office for information. From these discussions, we have acknowledged that we owe you a response to your inquiry about the impact of block grant legislation. This will be delivered to your office today or tomorrow.

Mr. Hope indicated in his conversation some concern about the need for additional information on a previous response we made in our letter of April 6 (signed by Assistant Secretary Harry Singleton). If the telephone reply does not satisfy your needs, please follow up with further specifics and we shall respond to those.

You should be aware that the Courts are coming down with new definitions that will reflect on coverage under certain statutes. When different Circuit Courts of Appeals come up with different views of the law, we are bound by the Court. Eventually this will have to be settled by the U.S. Supreme Court. In the meantime, our task is greatly complicated since we have different jurisdictions that we must respect. This is very complex and difficult for us, and you and your staff should be aware of this.

Sincerely,

T. H. Bell

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

UNITED STATES COMMISSION ON CIVIL RIGHTS
Washington, D. C. 20425

APR 1 3 1983

Honorable Terrel H. Bell
Secretary of Education
Washington, D.C. 20202

Dear Mr. Secretary:

Thank you for your April 12, 1983 letter asking whether we need specifics not provided in the Assistant Secretary for Civil Rights' April 6, 1983 letter. That letter replied to our December 2, 1982 inquiry (copy enclosed) about the Department's policies on a number of issues raised by current litigation under Title IX of the Education Amendments of 1972.

The Assistant Secretary's response suggested that exchanges since our December inquiry have at least partly met our information needs. As regards the particular questions we raised, it referred to answers the Supreme Court may provide in Grove City College v. Bell and possibly Hillsdale College v. Bell. Pending the Supreme Court ruling, the letter concluded, civil rights will be enforced according to "the controlling decision in the jurisdiction where the case arises."

As Commission staff discussed with your staff, we do not believe this letter is adequately responsive to our inquiry. Even if the Supreme Court consolidates Hillsdale with Grove City, it will not resolve all the questions we raised. Neither case, for example, involves the Department's investigative authority, as did University of Richmond v. Bell. Nor will the court directly rule on the Department's enforcement authority under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. The bearing of its decision on these laws will be subject to departmental interpretation.

More generally, we are interested in the Department's current interpretations of specific rulings already in place, since they must guide its enforcement activities until the Supreme Court finally resolves the issues. While we appreciate the assurance that the Department is following various controlling decisions, for our monitoring purposes we need to know what restrictions the Department believes have been imposed and where. We asked for such specifics because we share your view that conflicting decisions now greatly complicate the Department's enforcement task. In this regard, the Assistant Secretary recently sent us requested documents on two cases the Office for Civil Rights has been unable to resolve because of restrictions imposed by Richmond. These, however, do not provide a full view of departmental policy, and we have had no other substantive exchanges on the issues since last December.

One of the Commission's principal responsibilities is to appraise Federal civil rights enforcement policies. We believe the Education Department's policies on the issues we raised may have far-reaching implications for civil rights protections in federally-assisted programs. We also believe our capacity to evaluate them is limited by lack of a detailed, official statement of what they are. We, therefore, regard a full response to our original inquiry, including copies of any internal guidance on civil rights enforcement, as essential to our work.

If you would like additional clarification of the questions posed in our December 2 letter, your staff may call Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, at 254-6701.

Sincerely,

FOR THE COMMISSIONERS:

PENNY

CLARENCE M. PENDLETON, JR.
Chairman

Enclosure

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

April 19, 1983

The Honorable Clarence M. Pendleton, Jr.
Chairman
U.S. Commission on Civil Rights
Washington, D.C. 20425

Dear Mr. Chairman:

As a result of our meeting Friday, I understand that the Commission would like a more formal response to the questions set out in your letter of December 2, 1982. An item-by-item explanation of each of these points is provided below. Please note that with *Grove City College v. Bell*, and *Hillsdale College vs. Bell*, now pending before the Supreme Court, the answers provided here must be viewed as subject to amendment in light of the Court's forthcoming decision in these pivotal cases.

1. Does "Federal student aid, including both student grants and guaranteed loans, constitute Federal financial assistance for the purposes of Title IX enforcement?"

Federal student aid, including both student grants and guaranteed loans, may or may not constitute Federal financial assistance depending on which Federal Court jurisdiction [illegible] in question. This matter has been the subject of extensive litigation and the conflicting views are highlighted by *Grove City*, in one Circuit Court, and *Hillsdale*, in another. With respect to the views of this Department, we steadfastly stand for enforcing the law. Any interpretation of the law, as you know, is subject to periodic alteration by the Courts through litigation. We stand by our regulations as published (see your file copies for more specifics), unless modified by the Courts. When the present litigation has been concluded, we may have to modify our regulations, but we are not rewriting any rules in this area at this time.

2. Can the Department "enforce its Title IX regulations in all the components and functions of an education institution receiving Federal student aid except those that have entirely separate, non-Federal funding sources?"

The ability of the Department to "enforce Title IX regulations in all the components and functions of an educational institution receiving student aid" remains unchanged, except insofar as Federal Courts have ruled otherwise. Again, please refer to our regulations. They have not been rescinded, but our ability to enforce them has been modified by Court orders.

3. Can the Department "enforce its Title IX regulations in all the components and functions of an education institution, except those with entirely separate, non-Federal funding sources, when the institution receives other Federal funds not earmarked for a specific program--for example, monies for indirect costs included in Federal research grants?"

Where Federal funds have not been earmarked and accounted for a specific purpose or program--especially indirect costs in Federal research grants--Courts have held both ways, the assistance may or may not apply to all "components and functions of an educational institution." As noted in the other responses, our regulations apply in those jurisdictions where Federal Courts have not ruled otherwise.

4. "Under Title IX /does/ an 'education program' include a complex of all interdependent education components and functions, and are all covered by Title IX and the Department's regulations when any receives Federal aid insofar as such aid frees other funds that could be allocated to them?"

The express premise of this question is that Federal aid "frees other funds" and Federal authority follows both the Federal aid and the "other funds." The answer is far-reaching and complex; in a multi-campus system, general aid received by one institution extends this Department's authority only to that institution. In the history of civil rights enforcement, receipt of Federal aid in one school district, or campus of a statewide system of education, may theoretically free money for allocation to others--but this is not necessarily so. For example, Chapter 1 of the Education Consolidation and Improvement Act states explicitly that Federal money cannot be used to supplant State and local funds.

5. May the Department "investigate possible Title IX violations in unassisted programs to determine whether they 'infect' assisted programs?"

The Department was prohibited by the Federal Courts from doing so at the University of Richmond. If other Courts should respond in a similar fashion, our ability to investigate will be sharply curtailed. Absent such rulings, the Department may seek information about independent administrative units which may have an effect on the ability of the Federally funded program to operate nondiscriminatorily.

6. May the Department "investigate possible Title IX violations without first establishing that the program in which they are alleged to occur receives Federal financial assistance?"

In the Eastern District of Virginia, pursuant to Richmond v. Bell, the Department is without authority to investigate without first establishing that the program receives Federal financial assistance. There have been no other similar holdings in other jurisdictions to date.

7. Are there "Federal court jurisdictions where the Department believes
& it currently cannot enforce its national Title IX policies?" If so,
8. provide a list of such and an interpretation of the Department's authority in such districts. Does the Department "believe Title IX cases have limited in any way its authority to enforce Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitaiton Act of 1973?" If so, identify such cases and explain how they apply to the Department's authority.

There are no jurisdictions in which the Department cannot enforce Title IX. Nor have any cases addressed the substantive rights of Title IX in such a way as to limit the Department's authority to enforce Title VI of the Civil Rights Act or Section 504 of the Rehabilitation Act.

The documents you requested are enclosed. In essence, we have assumed that your interest is in receiving copies of documents which reflect a change in OCR's policy in the last three years such that the present position of the Department is manifest with respect to each change in policy.

I hope these answers provide the information you need regarding the Department's civil rights authority and practice.

Sincerely,

T. H. Bell

Enclosures

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

APR 2 1 1983

Honorable Terrel H. Bell
Secretary of Education
Washington, D.C. 20202

Dear Mr. Secretary:

Thank you for your April 19, 1983 response to the Commission's December 2, 1982 and followup requests for the Department's views of its civil rights enforcement authority and related documents. The information you have provided will assist us in carrying out our responsibilities for appraising Federal civil rights policies.

We, however, will need more of the information we requested to address the critical issues we raised. We understand the Department considers some information is sensitive because of pending litigation and perceive limitations in your response related to briefs the Government soon must file in Grove City College v. Bell and possibly Hillsdale College v. Department of Education and Iron Arrow Honor Society v. Bell. These cases involve basic questions about the reach of Federal civil rights protections. We, therefore, will be following up on the Department's positions while continuing to respect legitimate needs for confidentiality. We also will need more specific explanations of the Department's understanding of restrictions imposed in some jurisdictions and will be identifying for you the points your response did not fully clarify.

Pending decisions may have a profound impact on the civil rights policy issues we raised. We, therefore, look forward to further discussions about the substantive concerns that prompted our initial inquiry.

Sincerely,

FOR THE COMMISSIONERS

PENNY

CLARENCE [illegible] PENDLETON, JR.
Chairman

UNITED STATES COMMISSION ON CIVIL RIGHTS
Washington, D. C. 20425

May 4, 1983

Honorable William French Smith
Attorney General
Washington, D.C. 20530

Dear Mr. Attorney General:

You will recall the Commission's letter to you on August 10, 1982 expressing concerns about the district court ruling in *University of Richmond* v. *Bell*, 534 F. Supp. 321 (E.D. Va. 1982). We conveyed our view that the court's theories, if accepted as proper limits, would decimate civil rights protections in education and undermine the broad remedial purposes of Title IX of the Education Amendments of 1972 (20 U.S.C. §1681). We also cited concerns about related protections against race and handicap discrimination under Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). When the Justice Department decided not to appeal *Richmond*, we issued the enclosed September 15, 1982 statement summarizing the possible implications and urging future decisions more supportive of Federal equal opportunity guarantees.

The Assistant Attorney General for Civil Rights responded, explaining you had recused yourself from the *Richmond* case. His September 16, 1982 and October 5, 1982 letters suggested the ruling would not have far-reaching consequences and that the decision against appealing it reflected no major change in Federal civil rights enforcement policy, as we believed. He acknowledged no implications for Title VI or Section 504. Copies of his letters and our responses are enclosed.

We feel compelled to raise our concerns again with you because recent events suggest that, despite the Assistant Attorney General's assurances, he now has adopted *Richmond* standards as Federal policy. Specifically, in a March 15, 1983 memorandum to the Secretary of Education, the Assistant Attorney General advanced standards for Title VI, Title IX, and Section 504 investigations far more restrictive than those in the Education Department's regulations. The memorandum raises further doubts about the Justice Department's commitment to defending Education's established authority before the Supreme Court in *Grove City College* v. *Bell*, 687 F.2d 684 (3d Cir. 1982), *cert. granted*, 103 S. Ct. 1181 (1983), and other cases.

The memorandum indicates the Assistant Attorney General does not believe the narrower standards will require much change in Education Department investigations. It also indicates any changes necessary to conform to the standards are "a statutory mandate recognized by the U.S. Supreme Court." This suggests the Assistant Attorney General expects the Education Department to make any such changes forthwith. The memorandum makes no reference to formal rulemaking procedures. It, thus, would appear to condone, if not require, significant changes in Education's regulatory policies without public notice or opportunity for comment, as required by the Administrative Procedure Act.

The Education Department's established civil rights regulations represent longstanding Federal policy successfully defended by the Justice Department in Republican and Democratic administrations alike. They cover any program receiving or benefiting from departmental financial assistance and permit investigations of any unassisted program whose discriminatory practices may "infect" an assisted program. They permit the Department to investigate a program before making a final determination on whether it receives assistance. We believe these regulations, fully enforced, would prevent Federal financial support for discriminatory practices, as Congress intended.

Under the March 15 memorandum, the Department generally could not investigate or require remedies for civil rights violations in programs indirectly assisted by Federal funds. For example, although virtually all an institution's programs may receive support from Federal student aid monies, the Department could require nondiscrimination by schools not otherwise assisted only in student aid operations. Even some directly assisted education programs, such as those supported by research grants and contracts, apparently would be exempt from departmental enforcement activities. Investigations under the "infection theory" would be limited to admissions programs, although discriminatory practices in other programs also may deny equal educational opportunity guaranteed by Federal law. This restriction, we note, is narrower than the Assistant Attorney General's September 16 interpretation of Richmond. Further, as under Richmond, the Department could not investigate most cases unless it first could trace Federal funds directly to the allegedly discriminatory program. We proviously commented on the particular problems this restriction would impose on civil rights enforcement in block grant programs. The memorandum would extend it from one district court jurisdiction to the entire Nation.

According to the memorandum, these restrictions are required by North Haven Board of Education v. Bell, ___ U.S., ___, 102 S. Ct. 1912 (1982). The Supreme Court, however, made no limiting reference to Title VI or Section 504 and expressly reserved the issue of the extent of program coverage under Title IX for resolution in future litigation. Lower court opinions the memorandum cites fall short of being controlling precedent. Rulings that rejected the restrictions it adopts, including the Third Circuit Court of Appeals' Grove City decision, are ignored. The memorandum, thus, reflects a clear preference for policies far narrower than the established regulatory policies challenged in that case.

We believe the Justice Department should defend vigorously the Education Department's civil rights regulations and neither initiate nor approve new restrictions unless required by definitive rulings. Justice concurred with this view when, as we recommended, it withheld approval of proposed changes in regulations that concurrently were being reviewed in North Haven. The recent memorandum, however, suggests a restrictive ruling in Grove City would be welcome. Indeed, if implemented, the memorandum effectively would supersede the Education Department's regulations before a Supreme Court ruling that well might uphold their validity. As noted, the memorandum does not suggest the Education Department should carry out such changes through rulemaking procedures required under the Administrative Procedure Act.

According to Justice Department documents, the memorandum and other materials indicating reversals of longstanding Federal civil rights enforcement policies were called to your attention by an April 13 memorandum from a Civil Rights Division attorney. Your April 21 response said the Assistant Attorney General "is accurately reflecting" Justice Department policies. We, therefore, would appreciate a clarification of those policies and plans for implementing them.

Specifically, we would like to know whether the Justice Department plans to defend the Education Department's authority to enforce Title IX and other civil rights laws in programs assisted or benefited by Federal funds. If not, please explain whether and how the Department believes this authority, established in regulations, will receive adequate representation in Grove City and other cases.

An explanation of the circumstances that prompted the March 15 memorandum and its current status also would be appreciated. We particularly would like to know whether the Justice Department expects the Education Department to adopt the narrower standards at this point and, if so, whether they will be proposed with an appropriate rationale and opportunity for public comment. In addition, please indicate whether the Justice Department is considering similar standards for other Federal assistance agencies. For example, on the analogy of Federal student aid, will it require the Department of Health and Human Services to restrict civil rights investigations in hospitals assisted by Medicare and Medicaid to the offices that administer those funds?

Failure to mount a strong defense of the Education Department's established regulatory policies in Grove City would jeopardize civil rights protections throughout the Nation's educational system. It also could undermine protections in many other areas, such as health care and municipal and social services, where serious discrimination persists. With a Justice Department brief now due in early July, we view the issues raised by the Assistant Attorney General's memorandum and your apparent endorsement of it with some urgency. We, therefore, would appreciate a response to this inquiry by May 23 so that we can consider it at our June meeting.

If you have any questions about this request, your staff may call Deborah P. Snow, Assistant Staff Director for Federal Civil Rights Evaluation, at 254-6701.

Sincerely,

FOR THE COMMISSIONERS

Penny

CLARENCE M. PENDLETON, JR.
Chairman

Enclosures

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

May 4, 1983

Honorable Terrel H. Bell
Secretary of Education
Washington, D.C. 20202

Dear Mr. Secretary:

The Commission, as you know, has been concerned about policy developments affecting civil rights enforcement in education. In December 2, 1982 and followup letters, we requested the Education Department's views of its civil rights enforcement authority. Your April 19, 1983 response said the Department's policies were expressed in its regulations as published. Your letter noted they could not be fully enforced in all Federal court jurisdictions, but indicated they would not be modified unless pending decisions in Grove City College v. Bell and possibly other Supreme Court cases so required. It also stated that decisions limiting the Department's ability to enforce Title IX of the Education Amendments of 1972 had not affected its enforcement authority under Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitation Act of 1973. Your letter, thus, clearly indicated that the Department applied restrictions imposed by University of Richmond v. Bell and Hillsdale College v. Bell only to Title IX enforcement and only in the specific jurisdictions covered by these rulings.

As we wrote you on April 21, the information you provided still left some unanswered questions. We, however, were reassured by your basic policy statement because we believe the Department's regulations, fully enforced, would prevent Federal financial support for discriminatory practices, as Congress intended. We also believed, on the basis of your letter, that the Department intended to enforce the requirements our inquiry addressed in the vast majority of jurisdictions unless some future definitive ruling mandated a change.

Since this correspondence, we have reviewed a March 15, 1983 memorandum from the Assistant Attorney General to you advancing standards for Education Department civil rights investigations. As the enclosed letter to the Attorney General indicates, these standards, in our view, seek to extend Richmond and Hillsdale restrictions nationwide and to all the civil rights laws the Department enforces. If they were implemented, departmental policies would be far narrower than those in existing regulations. The memorandum indicates the Assistant Attorney General does not believe the narrower standards will require much change in Education Department investigations. It also indicates any changes necessary to conform to the standards are "a statutory mandate recognized by the U.S. Supreme Court." This suggests the Assistant Attorney General expects the Department to make any such changes forthwith. The Assistant

Attorney General's transmittal offers to discuss the memorandum further "if you have additional questions," but does not suggest discussion about whether policy changes are needed or advisable without further Supreme Court guidance. This also suggests the Department is expected to adopt the standards without awaiting a Grove City ruling.

The major inconsistencies between the Assistant Attorney General's March 15 memorandum and the April 19 policy statement you sent us raise serious concerns. There is an additional disturbing inconsistency between your April 19 statement and an April 29 memorandum from your Chief of Staff stating that the Education Department has not determined its position on the standards. We, therefore, would like to know whether the Department is reconsidering its policy of enforcing its civil rights regulations as published except where expressly prohibited by court orders. If you foresee the possibility of any change unrelated to pending Supreme Court decisions, we would like a full explanation.

As we view this matter with some urgency, we would appreciate a response by May 23 so that we can consider it at our June meeting. If you have any questions about this request, you or your staff may call John Hope, III, Acting Staff Director, at 254-8130.

The Commission continues to follow with great interest the Department's civil rights enforcement policies and procedures. We, therefore, ask you to inform us of the Department's response to the Assistant Attorney General's memorandum and any followup communications on the issues.

Sincerely,

FOR THE COMMISSIONERS

Penny

CLARENCE M. PENDLETON, JR.
Chairman

Enclosure

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1983

The Honorable T. H. Bell
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D. C. 20202

Dear Mr. Secretary:

Enclosed is the Memorandum we discussed concerning investigatory activities of the Department of Education under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). I would be pleased to discuss this mat with you further if you have additional questions followi review of the enclosure.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Daniel Oliver
Harry Singleton

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

March 15, 1983

MEMORANDUM

The civil rights statutes, Title VI (42 U.S.C. 2000d), Title IX (20 U.S.C. 1681), and Section 504 (29 U.S.C. 794), provide the Department of Education (hereinafter the "Department") with authority to regulate and investigate recipients of financial aid from the Department on a program-specific basis. Based on the Department's descriptions of its financial assistance programs, it appears that the Department's funding statutes fall into three broad categories: (1) assistance to a specific program of a recipient, as determined by the statute's particularized purpose(s) and the use of the Federal financial assistance by the recipient; (2) general assistance to recipients; and (3) assistance for the construction of facilities. The purpose of this memorandum is to explore programmatic enforcement procedures within each of these categories..

Investigatory Responsibilities

The obvious starting point in the Department's investigatory process is with receipt of an allegation of discrimination, or upon submission of evidence giving rise to a reasonable belief that discrimination is occurring at an institution. In the normal course, it is presumed that the Department can ascertain from its own funding records whether financial assistance is being provided to the purportedly offending institution, and, if so, under what funding program or programs. The enforcement experience of the Civil Rights Division under the various Federal assistance statutes confirms that this basic record information is readily available in most instances and easily ascertainable.

If the challenged institution is not one receiving Federal financial assistance under a Department program, the alleged discriminatory behavior cannot be investigated by the Department's Office of Civil Rights (OCR). This conclusion does not foreclose a private action by the complainant, nor does it immunize the institution from possible investigation by another Federal agency (e.g., Office of Revenue Sharing) if that agency is providing financial assistance.

Assuming Department funding under one or more of its financial assistance programs, OCR's investigatory authority is shaped by the nature, purpose and use of the particular kind of assistance provided to the recipient. It is in this connection that the several categories of funding statutes become important.

A. Specific Assistance Programs. A recipient receiving Federal financial assistance under specific, particularized assistance programs of the Department may, under the above civil rights statutes, only be regulated and investigated in those programs. 1/

Examples of the proper approach to enforcement of civil rights protections under these statutes include: a recipient which receives only adult education assistance (20 U.S.C. 1203) may only be regulated and investigated in the operation of its adult education program; a recipient which receives assistance only for its library (e.g. under the College library resources program (20 U.S.C. 1022-24) or the public library services program (20 U.S.C. 352054)) may only be regulated and investigated in the operation of its li[illegible]; a recipient which receives assistance for its bilingual vocational education program (20 U.S.C. 2411-21) may only be regulated and investigated in the operation of its bilingual vocational education program; a recipient which receives only work study funds (42 U.S.C. 2753) or Pell grant funds (20 U.S.C. 1070a) may only be regulated and investigated in its student financial aid activities. 2/

1/ A recipient receiving Federal financial assistance under more than one program administered by the Department may be regulated and investigated in all such programs.

2/ For a listing of additional specific assistance statutes, see Appendix A, infra.

A small number of the specific assistance statutes administered by the Department, while not constituting a general grant in aid to the recipient, do encompass multiple programs or activities of the recipient. In such case, the recipient's application should delineate the specific programs for which Department assistance is being requested, and a presumption thus attaches that all programs so identified in the application do indeed receive federal aid. Unless the Department has independent knowledge that only certain of these programs are receiving Departmental assistance, or a showing is made by the recipient that a listed program is nonfunded -- which would in either event rebut the presumption -- the Department may regulate and investigate all such programs. 3/

B. General Aid Programs. When the Federal financial assistance that the Department provides is in the form of a general grant or general aid that is not earmarked for particularized programs, all the programs and activities of the recipient fulfilling the broad purposes of the assistance statute are presumed to be covered by the applicable civil rights laws. In order for a recipient in such circumstance to avoid Department investigation of any of its programs evidence sufficient to rebut the presumption as to that particular program(s) must be forthcoming. Once the Department is satisfied that the identified program(s) does not in fact receive any of the Federal financial assistance going to the recipient in the form of general aid, further investigation in that area is foreclosed as being outside the coverage of the civil rights statutes.

3/ An example of a multiple program assistance statute is 20 U.S.C. 3231, which provides for bilingual education assistance to a school district that may be used for, inter alia, elementary and secondary bilingual education programs, adult bilingual education programs, and preschool bilingual education programs, and requires the recipient to list the activities for which it wishes to receive assistance. If a school district lists in its application only elementary and secondary bilingual education programs, the presumption is that they alone receive Federal funds and are subject to Department scrutiny. If, on the other hand, the adult and preschool bilingual education programs are listed on the application as well, then all the listed programs are presumed to be within the coverage of the civil rights statutes, subject to rebuttal only to the extent it can be shown that those programs are in fact not receiving federal funds.

For example, if the Department determines that a local educational agency receives impact aid funds (20 U.S.C. 236- 44), the Department may presume that all of the elementary and secondary programs and activities of the school district receive Federal financial assistance. 4/ Therefore, it may regulate and investigate all such programs and activities except to the extent that the recipient demonstrates some of its programs do not receive such funds. A similar analysis obtains for recipients of Federal financial assistance for developing institutions (20 U.S.C. 1051, see 20 U.S.C. 1052(a)(1)(D)). The Department may assert jurisdiction over all academic, administrative, and student service activities of such a recipient under the same rebuttable presumption mentioned above. 5/

C. Construction Programs. The Department also provides construction fundr to institutions to assist in the building or renovating of school facilitiés. In such circumstances, the civil rights Federal funding laws permit the Department to reach discrimination in all of the programs and activities conducted within the wholly or partially funded buildings. whether they were built for athletics or philosophy. The Department administers a number of such construction assist statutes including those under the federal impact aid pr (20 U.S.C. 631; id. 646); Higher Education Act (20 U.S.C 1132c); and Library Services and Construction Act (20 US.C. 355a).

CONCLUSION

Congress undertook through Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 to reach discrimination based on race, sex and handicap, respectively,

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conducted by the local educational agency

4/ Other programs purposes of the impact aid Beyond the scope of the broad statute would not be covered.

It should also be noted that Congress did not intend that the termination of Federal financial assistance under general aid programs be wholesale in nature. Only the portion of the general federal aid used in the part of the recipient's programs where discrimination has occurred may be cut-off. This may involve a pro-rata termination of Federal financial assistance if the precise amount of Federal financial assistance involved cannot be determined.

general assistance statutes, see

5/ For a listing of other Appendix B, *infra*.

in any program or activity receiving Federal financial assistance. The Supreme Court held in *North Haven Board of Education v. Bell*, 50 U.S.L.W. 4501, 4507 (1982), that the program-specific nature of those crosscutting discrimination statutes must be faithfully observed in their implementation and enforcement. 6/

Thus, where, as the court held in *University of Richmond v. Bell*, 543 F. Supp. 321 (E.D. Va., 1982), the desired investigation involves a program (*i.e.*, athletics) other than the one (*i.e.*, student financial aid) receiving Federal funds under a specific assistance statute (*i.e.*, Pell Grants), the Department cannot conduct such an investigation without first establishing that the challenged program (*i.e.*, athletics) receives Federal funding. It is only when the institution receives a general Federal grant that the Department can indulge the presumption of comprehensive programmatic coverage for investigatory purposes, subject of course to rebuttal by the recipient as to any program not actually receiving Federal assistance.

One important caveat needs to be added. In the educational arena, particularly, discrimination in an institution's admissions' policy necessarily infects all programs and activities of the college or university. In view of this reality, claims of discrimination in the student admissions area, if reasonably grounded, provide adequate basis for the Department to investigate the admissions program even when it is not funded, so long as any of the institution's other programs or activities receives Federal financial assistance.

We would not expect this analysis to occasion much change in the Department's current investigation practices. To the extent it becomes necessary to better tailor future investigatory efforts to discrete funded programs -- rather than launching a broad-based inquiry of the institution as a whole -- that is a statutory mandate recognized by the U.S. Supreme Court, and we can hardly afford to ignore it.

W. Bradford Reynolds
Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

6/ To similar effect are: *Dougherty County School System v. Bell*, No. 78-3384 (11th Cir., Dec. 20, 1982); *Hillsdale College v. HEW*, No. 80-3207 (6th Cir., Dec. 16, 1982); *Rice v. President and Fellows of Harvard College*, 663 F.2d 336 (1st Cir., 1981); *Brown v. Sibley*, 650 F.2d 760 (5th Cir., 1981); *Board of Public Instruction of Taylor County v. Finch*, 414 F.2d 1068 (5th Cir., 1969); *Othen v. Ann Arbor School Board*, 507 F. Supp. 1376, 1383 (E.D. Mich. 1981), *aff'd on other grounds*, No. 81-1259 (6th Cir., Feb. 2, 1983); *Mandel v. HEW*, 411 F. Supp. 542 (D. Md. 1976), *aff'd en banc* by an equally divided court, 511 F.2d 1273 (4th Cir.), *cert. denied*. 439 U.S. 862 (1978).

Mr. SIMON. Thank you, Commissioner.

The Chair will follow a 10-minute rule, if that is all right with the other Members, so we can pursue these things but still give all Members a chance to ask questions.

I guess, if I may address this first question to Mr. Singleton and Mr. Reynolds, the reason for the hearings is the perception on the part of many of us in Congress that the administration is dragging its feet in the area of civil rights in a great variety of ways, frequently in personnel appointed. I happened to spot Joy Simonson in the audience here, who used to administer the Women's Education Equity Act. I recognize that any administration can do with whatever people it wants. But to appoint people who fundamentally don't believe in the law they are to administer does raise serious questions.

The argument that GSL's are not aid to institutions becomes very difficult to follow. If I may quote, Mr. Reynolds, from your letter of March 15 to Secretary Bell, you say,

> Examples of the proper approach to enforcement of civil rights protections under these statutes include a recipient which receives only work study funds or Pell grant funds may only be regulated and investigated in its student financial aid activities.

Now, it is fairly clear to anyone who follows the education scene—and I am sure Mr. Singleton would agree with this—that tuition assistance is a major form of aid to colleges and universities. To say that only the student aid office can be attacked and not the chemistry department or any other department seems to me an incredibly narrow definition of what we're about. I am curious as to how you respond to that.

Mr. REYNOLDS. Well, I don't think I am the proper individual to respond to the question about appointments of personnel. I obviously have——

Mr. SIMON. No, I just mentioned that——

Mr. REYNOLDS. I will pass on that.

Mr. SIMON. Yes. I mentioned that simply because it causes serious concerns on the part of some of us who want to see this Nation move ahead in this area.

Mr. REYNOLDS. Well, Congressman, I think the issues that you pointed to really relate to matters that are, have been, and still are being litigated in the different courts of this country.

We are charged with the responsibility to enforce the laws as you all hand them to us. I would love to have the ability to rewrite a number of statutes, but that is not within my responsibility or proper charge. I have to look at the statutes as they have been drafted, look at the legislative intent, look at the court decisions that have interpreted them, and to the best of my ability try to enforce the law based on that kind of background.

I think it is clear that Congress included the words "program or activity" in title IX and title VI and 504. It is equally clear that an effort to have those statutes passed without any limitation to the program or activity would not have gotten through Congress.

Now, the Congress, at the time it addressed these different statutes, struggled with this very issue, and in order to get statutes on the books, the decision was made by Congress that there would be a program or activity limitation in section 901 as far as title IX is concerned and 601 in title VI and 504.

The courts have said you cannot interpret the statutes to read that limitation out of it. It is now an issue before the Supreme Court as to whether the *Grove City* interpretation, which says that we will forget about the program or activity but simply suggest that once a dollar goes to an institution, the whole institution is a program, the Supreme Court has indicated it is interested in looking at that issue. Our view is, based on the *North Haven* decision and the overwhelming majority of the lower court decisions that have addressed this issue, both in the area of title IX and title VI, as well as in the areas of 504, that program or activity has a meaning in the statute, that it is not just a superfluous phrase, and that it is not for the executive branch to rewrite the statute, that that is for Congress to do.

Dr. BERRY. May I just comment on that, Mr. Simon?

Mr. SIMON. You may in just a moment.

But if I may pursue this, I am interested in how you reach a decision that is so different from previous administrations of both political parties. How——

Mr. REYNOLDS. Well, I guess that my decision was reached initially by looking at the statute and the legislative history, and then by taking a lead from what the Supreme Court has said about these statutes.

The *North Haven* decision by the Supreme Court added some enlightenment in this area that we didn't have before, and it said the statute was a program-specific statute and to the extent that the regulations have been drafted in broader terms, by whatever administration, they have to be interpreted as being program specific.

Now, once the Supreme Court speaks to that issue, until it again speaks to it, or Congress does something, I am not at liberty to ignore that. It is with that kind of guidance that we feel we need to look at these questions.

Now, how one defines in any particular case the program is going to depend on the funding statute, primarily, which is what the memorandum that I have attached to my testimony addresses. There are any number of fact situations and variables that are going to come into play, that the courts are going to have to wrestle with on how you define the word "program" or "activity" in a discrete instance. But it is clear, I think, certainly after the Supreme Court has spoken to it, that the statutes are program specific, that the phrase "program or activity" is in the statute for a reason and cannot be ignored, and simply read out of the statute, or cannot tolerate an interpretation of a statute that pretends it is not there.

Mr. SIMON. Without violating executive privilege, how do you reach such a decision? Do you, within your division, discuss this and do you just decide what you're going to do? Do you discuss it with the Attorney General? Do you get a message from the White House? How do you make that decision?

Mr. REYNOLDS. Well, that decision is made with the input of a number of people—the Department of Education, the Civil Rights Division, the Attorney General, the Deputy Attorney General, the lawyers that are in the litigation, the judges that decide these issues. We have to, in essence, analyze all of that information and a judgment has to be made, and then it is the responsibility of the Department of Justice to proceed with it.

We have made the judgment and thus far it has been upheld in the courts.

Mr. SIMON. Commissioner Berry, you are eager to say something.

Dr. BERRY. I was very eager, because I couldn't believe my ears when I was listening to Mr. Reynolds, who I understand is a very good lawyer. I was noting that every lawyer knows that you may interpret a statute narrowly or broadly until there are some boundaries that you cannot go beyond.

The Supreme Court opinion in *North Haven* that we keep fighting about and keep writing letters back and forth about, keep talking about quite clearly says—and I am quoting from the opinion: "We do not undertake to define 'program' in this opinion." That's what it says on page 1927. It also says that the Department of HEW recognized in publishing the title IX regs that the act is program specific, and it quotes from what the Department says. It says,

> This interpretation is consistent with the only case specifically ruling on the language contained in title VI, which holds that Federal funds may be terminated upon a finding that they are infected by a discriminatory environment.

The Court goes on to say that HEW apparently thinks that applies to title IX and, as read, the regulations conform with the limitations Congress enacted. "We, therefore, do not define 'program'." So they approved the argument that "infected by a discriminatory environment" is at least an element in program specificity, but then went on to say "we don't need to define what program specificity is; we're just saying that yes, the language is program specific."

Now, in picking and choosing what theories the Justice Department would like to advance on the case, it could just as easily have picked the opposite theory as to pick that theory. To tell us otherwise is to assume that we know nothing about how lawyers do anything and that they have no range of discretion in deciding what to do.

So what we are suggesting is that, as a matter of policy, the Justice Department has chosen to pick a theory, without the Court saying it has to—the Supreme Court has not said they have to adopt that narrow definition of program specificity. To tell us otherwise is to mislead us and that, in point of fact, they decided as a policy choice to do that, which ignores the reality of what it will do to students in higher education institutions—what it will do to handicapped students, to women, to minorities, what it will do to the overall purpose of seeing to it that Federal resources don't go to discriminate, and that was a conscious choice that was made based on the documentary evidence that I have submitted for the record.

Mr. SIMON. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman. I find the discussion very interesting today.

Mr. Reynolds, carrying on with Mr. Simon's line of questioning, you will admit that your theory of enforcing the law, the various laws, will result in less civil rights enforcement in these higher education institutions; isn't that correct?

Mr. **Reynolds**. Less in terms of—I mean, I'm not sure what you mean.

Mr. **Edwards**. Well, you're exempting a lot of programs from civil rights enforcement. You have to have a pinpointed Federal aid before the civil rights laws come into effect.

Mr. **Reynolds**. You have to have a federally funded program, that's right.

Mr. **Edwards**. What kind of a discussion did you have in the higher echelons of the Justice Department to come to that conclusion? That's a relatively new conclusion.

Mr. **Reynolds**. Well, what kind of discussions? We discussed the law, we discussed the *North Haven* decision, we discussed the statutory language, we discussed the legislative history. I think it probably was the fullest discussion that one could imagine.

Mr. **Edwards**. Was it pointed out that this decision you made finally is contrary to the general opinion and the writing of the regulations over the past number of years? Was that brought up?

Mr. **Reynolds**. Well, certainly to the extent that the Supreme Court suggested that the regulations have been written too broadly, it was, absolutely.

Mr. **Edwards**. In other words, you——

Mr. **Reynolds**. The Supreme Court spoke to that question, and one of the central issues that was addressed in *North Haven* was whether the regulations were drafted too broadly and, therefore, were invalid because the statute required that you have a program-specific limitation. The Court said the regulations can survive the Court's ruling in *North Haven* so long as the regulations are interpreted in a program-specific manner.

Mr. **Edwards**. Thank you.

Mr. Singleton, in your August 19 memo to the Secretary, you stated that Judge Warriner's pinpointing holding—what we are talking about now—was contrary to Office of Civil Rights regulations, and you emphasized that Judge Warriner's narrow definitions of program or activity, which is the policy that apparently the Justice Department favors, is against the trend of other courts. Is that correct? That was in your memo.

Mr. **Singleton**. That's correct. I don't have that memo before me, Mr. Chairman, but it sounds familiar.

Mr. **Edwards**. Well, you have got an inconsistency there, Mr. Reynolds. How do you explain the inconsistency? Mr. Singleton says the courts generally say the narrow definition is not their interpretation of the law, and you say it is.

Is there a political aspect to all of this?

Mr. **Reynolds**. Obviously, we're up here, Congressman. There has got to be a political aspect to all of this.

I am not sure how—I guess Mr. Singleton can speak to it, too. I think it is clear to point out, or it is right to point out, that there is a third circuit decision, two decisions in the third circuit, that suggest the proper interpretation of title IX is an institutional interpretation; that is, if a dollar goes to a university under whatever program, the whole university is, indeed, the program. There are decisions in the other circuits that take a diametrically opposite view.

I think the question that is before the Supreme Court really is whether *North Haven* suggests that the 3d circuit interpretation is the one that is correct under the statute, or the interpretation of the 5th circuit and the 11th and 6th and the 1st circuits is the proper interpretation of the statute. We do not infrequently find splits in the circuits on these issues and I suspect that is part of the explanation for Mr. Singleton's and my differences.

Mr. EDWARDS. Well, the Civil Rights Division of the Department of Justice is supposed to try to nudge the courts along the path of enforcement of the law in a wide sense of the word, and the paths of righteousness. Certainly, this narrow interpretation is not going to result in money being cut off from colleges that discriminate. I guess that's the bottom line. You have got to—as Mr. Singleton said, this creates a catch 22 situation for Mr. Singleton. Before you can investigate, it must show direct funding. But it can't show direct funding without investigating the administrative and budgetary structure of the recipient. That's a catch 22 as you described it, Mr. Singleton, right?

Mr. SINGLETON. That's correct, Mr. Chairman.

Mr. EDWARDS. Thank you.

Dr. BERRY. May I comment on the political issue that Mr. Edwards raised?

Mr. SIMON. Commissioner Berry.

Dr. BERRY. At least it seems to me that on some of these matters we have evidence that politics, in the sense of trying to decide how to advance the ideology of a particular administration, is at issue. We had last year the issue of GSL's and the definition of "Federal financial assistance," which I discovered this morning there is going to be a NPRM on, to my surprise, that we have the memo from Dan Oliver to the Secretary of December 2, 1981, which we have submitted to include in the record, that Brad Reynolds, he says, is going to recommend that they not change this definition this way based on the law in title VI and title IX, and then they go on to say that "he and I agree the lawyers, having done their job, the issue is primarily a political one and the decision should be made on a strategic political level."

I only point that out because apparently they are not unaware that there are some political aspects of this whole matter.

Mr. EDWARDS. Well, my last question—and I apologize for the question, but it was asked at our last hearing—was this narrow interpretation any part of the platform of the Republican Party or, as came out in our hearings last year when you were here, Mr. Reynolds, a part of speeches made in the campaign by now President Reagan?

Mr. REYNOLDS. I don't know. That is something that I would not——

Mr. EDWARDS. Do you know, Mr. Singleton?

Mr. SINGLETON. No, I am not aware of that, either.

Mr. Chairman, if I may add something here, I think what this demonstrates is the lack of clarity that we have on this particular issue. There is a split in the circuits over what the program-specificity argument means. What is a program or activity?

My particular concern about the University of Richmond case was the broad injunction that results in the catch 22 situation that I described. The fact is that, in many instances, I cannot tell whether there is direct Federal financial assistance to a program without getting in to investigate because a lot of the records we had to review are not that good. Putting it in context that is the concern that I have. I think the issue here is clearly one that demonstrates the lack of certainty we have. If it were clear cut, if there was no split among the jurisdictions and the overwhelming majority of them were all together we probably wouldn't have this problem.

Mr. **EDWARDS**. And the Justice Department, in your view, should have appealed the case?

Mr. **SINGLETON**. From the particular point——

Mr. **EDWARDS**. Yes.

Mr. **SINGLETON**. About the broadness of that injunction, that ties my hands, yes. I personally have a view that my investigative powers are rather broad. When we go to terminate funds, that's a little different.

Mr. **EDWARDS**. Thank you, Mr. Chairman.

Mr. **SIMON**. If the Chair could just use the prerogative of taking 1 additional minute here, when we talk about program specific, it seems to me that if we appropriate and authorize money for libraries, then you have to look at the library situation; when we talk about aid to students, student aid, through guaranteed student loans or Pell grants or college work study, you're talking about something that is university-wide in its application and not simply to the student aid office. I don't think any court is going to rule to the contrary on that.

Dr. **BERRY**. Well, some lower court in Richmond seems to be saying that, which is absolutely irrational. Anybody who has ever run any institution, the ones I have run, I have never kept all the student aid money in the student aid office. If I had, the institution would have had to close down. The money was used for the whole campus, as you're saying.

Mr. **SIMON**. Even the *Richmond* case is not that narrow, as I interpret it.

Mr. Conyers.

Mr. **CONYERS**. Thank you, Mr. Chairman.

I think these hearings are perhaps some of the most important going on, and they tie in very directly with our colleague from California, Gus Hawkins, who has been tracking the reversal in civil rights and affirmative action policy and law that has been going on in the Department. I think these hearings are going to be exceedingly important.

I come to this hearing in almost shock at the detail that I now find I am now going to be required to go into. I am perfectly prepared to spend the rest of this term of the 98th Congress working on this, because I see nothing more important than the considerations that bring us here. There have been so many statements that appear to be in conflict with each other—and, Mr. Reynolds, some of yours seem to be internally inconsistent.

The first one that I have to bring to your attention, since you only emphatically deposited here that you are looking to divine, the intent of the Congress and the laws that are put forward to you to enforce, and that you cannot ignore the Supreme Court decisions, and yet you are the same person who has publicly said that you are looking for an opportunity to overturn *Weber*.

Now, can you possibly square those two statements?

Mr. REYNOLDS. Well, I was reported to have said that. I never really said it, but I can still answer your question.

Mr. CONYERS. You are trying to overturn *Weber*?

Mr. REYNOLDS. *Weber* does not apply in the public employment sector, and the briefs that we filed in the cases of *New Orleans*, for example, and *Detroit*, and the one we filed in the *Boston* case, make clear in the briefs themselves that the positions we are advancing requires no overruling of *Weber*.

Mr. CONYERS. Well, what is it you have said about *Weber* that causes the press and those that send me these clips not to understand you clearly as I do here today?

Mr. REYNOLDS. I really wish that I knew what it was that causes the press not to understand when people talk to them. But I would suggest that the confusion arose because I was asked for my views on *Weber* and I indicated that *Weber* does not have application to the public sector and that I did not read *Weber* as suggesting that the court would necessarily rule the same way if it got the same kind of case in the public sector context.

Mr. CONYERS. Which you intended to make available to the court?

Mr. REYNOLDS. I didn't say that. I don't make anything available to the court. The court is the one that decides what is available to it and I would not presume to suggest that I make anything available to the court.

Mr. CONYERS. Well, just while we're here, so that at least I won't be one person that will be misquoting you, then can I infer—and I understand everything you have said here this morning and I will take this as the last word on the subject—that you are not in opposition to *Weber* and you do not seek to have it tested in any particularity?

Mr. REYNOLDS. Well, I'm——

Mr. CONYERS. OK. Then tell me what you really think about *Weber*. I hate to go off the track, Mr. Chairman——

Mr. REYNOLDS. What I think about *Weber* I'm not sure is too terribly relevant, what my personal views are on *Weber*.

Mr. CONYERS. Well, they are very important because it is your personal views that have been determining the policy decisions that reversed the course of four administrations, sir. I only wish they were unimportant. They are critical.

Mr. REYNOLDS. Thank you, sir.

I think that *Weber* is certainly the law as long as it's on the books, and I would follow the *Weber* decision fully and not suggest that, as long as it's there, there is a basis on which to depart from it. I do think the *Weber* decision is one that the Court very carefully aimed at the prviate sector, which was the issue that was before it, and made it clear that it was not addressing the separate question as to what would happen in the similar context in a public sector case.

We have stated that insofar as the public sector is concerned—we stated it in briefs before the Supreme Court and the lower courts—that we would not think the *Weber* rationale would extend to the public sector because there is a constitutional issue that is involved in that context which was not involved in *Weber*.

Mr. CONYERS. We will go into that at another point.

Is there a doubt in your mind that the perceptions of the reversal of at least more than a decade of civil rights law, practice and policy at the national level is being reversed in the present number of courses that have been challenged, that you are leading the Civil Rights Division in?

Mr. REYNOLDS. I think there is a perception that there has been a reversal. I think it is exaggerated. I think there have been some suggested changes that we have made with regard to the appropriate remedial approach. We have explained why we made them, both in policy terms and in terms of what the law now states and what we think it requires.

Mr. CONYERS. What is it that leads you to move toward this reversal, whether it is exaggerated in the perception of it or not? Why are we in any reversal whatsoever?

Mr. REYNOLDS. Well, to the extent that we have suggested changes, I think we stated quite clearly that our changes are based on the legal analysis that is available to us, and that the law does compel that certain actions be taken and not taken. And as long as I am in the executive branch, I have to take the laws as they are handed to us and interpret them based on what Congress said the laws should do.

Mr. CONYERS. Well, we are Congress, sir——

Mr. REYNOLDS. Right, absolutely.

Mr. CONYERS. You're not before a private body.

Mr. REYNOLDS. And that's why I suggest that may be the place to address the problems.

Mr. CONYERS. The members of these two committees assembled here and the fuller committee levels are probably the most supportive people of the laws that you are charged to enforce that you can find anywhere in government.

Now, it seems to me that if we are in a reversal, based upon your interpretation of the law, and nothing else, are you willing to enter into a discussion with me about the fact that we are having an adverse impact on the objectives around which these laws and policies have been built up in at least 10 years or more?

Mr. REYNOLDS. Certainly.

Mr. CONYERS. And if that is the case, then, is there anything we can do, besides having honest differences of view, that would help you to—I presume, although you haven't said it, and maybe I shouldn't presume it, but I presume that you regret the fact that it is your interpretations that have led to these reversals and that are now having a diminishing effect upon the people who were supposed to have been the objects of this Federal beneficence.

Mr. REYNOLDS. I don't apologize for our interpretations at all, Congressman. I think what we are saying, in the areas of quotas or forced busing, is the most advantageous change, if you will, for the minority groups in this country that anybody could come up with. We have seen, by the record, that quota relief has been nonproductive and counterproductive, that it has not increased the employment of minorities in the work force, and it has causes a divisiveness and the stigma that attaches to it, and that it is fighting discrimination with discrimination, which is the wrong way to get to the point where we are going to open up equal opportunity for minorities.

We have seen from the record that forced busing has caused school districts from throughout this country to become resegregated because of the problem of white flight, and you wind up with public education in most of these large jurisdictions that is not at all attentive to the educational aspects and is leaving large groups of minority people in the inner city with a poor education and no enhancement in desegregation. I think when you have that kind of evidence, that it is the responsibility on the remedial side for us to all collectively, not separately, to put our heads together and try to come up with better remedies.

This Congress as recently as last year, voted overwhelmingly in both Houses that forced busing is not a remedy that is working well or is one that should be made to use. Now, that is Congress speaking. That is not me. The courts——

Mr. CONYERS. Please don't remind me of what me and my colleagues do from year to year on the subject, sir. I am painfully aware of——

Mr. REYNOLDS. I understand that. But the courts also are addressing these issues and the courts are saying, in increasing numbers, that quota relief has a discriminatory feature that is not valid under the law. The courts are saying it is constitutionally acceptable to have a voluntary desegregation plan that is going to address the education rather than the transportation features of the schoolchildren. I don't think, in light of that, that it is counterproductive at all for us to be taking a hard look at these remedies and suggesting alternatives that are going to enhance the opportunities of blacks to come into the employment and enhance the opportunities of blacks to get a decent education, so that we can, indeed, get to the point in this country where we do have a color-blind society.

Dr. BERRY. Mr. Conyers——

Mr. CONYERS. Mr. Chairman, I ask unanimous consent that I be given a sufficient amount of time to ask one more question, and that Commissioner Berry be allowed to respond.

Mr. SIMON. You may ask one more question, and then Commissioner Berry is recognized.

Mr. CONYERS. This is a lecture that I have long needed, sir, and it couldn't be coming from a more appropriate source. I am going to value this and heed it. Because if you are correct, then I and the members of the Congressional Black Caucus can perform a valuable service to their constituents and black people in America by our trying to reach some conclusion on this point.

Now, there are a couple of little parts in here that we have to reach some further understanding on. We are engaged in a perceived reversal, no matter how exaggerated it is seen in some quarters.

Now, I thought we had agreed in an earlier statement of yours that it was, in fact, hurting the black and the women, the Hispanics, the handicapped and those minorities for whom these laws and policies have been devised. Now I understand you are saying, really, if I perceive this thing from your understanding of the civil rights struggle in this country, that the real way we are going to make change and progress is to follow these restrictions, curtailments, interpretations, that now seem to be the policy in your division and coming from this administration.

It is your argument, as you have just propounded it, that blacks and minorities, in fact, will advance and benefit from the policies which we view critically and have brought you before us on this morning. Is it fair to say that you don't see us being hurt by what you're doing? You're saying this, in the long run, or short run, or any run, is going to be of some benefit?

Mr. Reynolds. Certainly with regard to my prior remarks I would say that is absolutely so. With regard to the discrete——

Mr. Conyers. Can you demonstrate that?

Mr. Reynolds. Well, let me say one other thing and then come back to that, if I may. I would like to distinguish.

One of the reasons we are here today relates to the title IX interpretation and what the proper interpretation is of that. That decision that has been made is a legal decision we made based on what Congress gave us as far as the law is concerned. I am not saying to you that a redrafting or restructuring of that law by Congress might be a more beneficial way to approach these kinds of problems. On that issue, what I am saying is I have a law that is there, I have congressional legislative history, and I have Supreme Court decision and lower court decisions, and that is what pertains in terms of that particular issue.

On the other issues we discussed, I do think that if we can collectively look to alternative remedies in the employment area and in the school desegregation area, of the sort that we are exploring in the Department and have been using, that in the long term they will be beneficial to all minorities in this country.

If you ask me if I can give you empirical evidence, my answer is that at this juncture we don't have empirical evidence on that. We do have preliminary evidence to show that where we have utilized these remedies that we have been using over the past 2 years, they are promising and they do look like they are going to be better than the kinds of things that we have been seeing in the past. We do have the evidence that the remedies that have been used in the past have not been very effective in assisting minorities, either in the workforce in large numbers, or through the school system, in a way that gives them an enhanced desegregated educational opportunity. I think that with that kind of evidence we collectively could do well to explore these other alternatives and to move in that direction. But I don't have a body of evidence behind me because they have only been remedies that we have been working with over the course of the last 2 years.

Mr. Conyers. I would like you to document in any way you want the alternative remedies you keep alluding to. But we don't need any empirical evidence, sir, to know that when you go into the *Detroit* decisions, you are going to throw black cops out of jobs and an agreement that has already been entered into. You don't need to study what the impact of that is going to be. You don't really have to pretend you need a research function to determine what the

Richmond case really means and interpreting narrowly the great range of policies that you can.

Blacks are hurting here. You don't really need to go back and wait another 10 months to find that out. And their circumstances relative to affirmative action and equal opportunity practices in this country are being destroyed.

I have been traveling the country in the EEO conferences talking to the people on the frontlines, and they are all complaining down to the last man and woman in these fields. It seems disingenuous that you could come before the Congress itself to tell us what our intent is, and that you keep reminding me about what we have done and not done. The fact of the matter is that the policies you have undertaken are having an incredibly harmful and painful, immediate and visible impact in this whole struggle for equality in America. There is nothing to wait for. So I respectfully don't see what there is to wait for in a turnaround.

The deliberateness and the wide range of offenses have given nearly every commentator of this subject and most of the law groups great disturbance about what you are doing in your division and in the Department of Justice and in the Department of Education as well.

I don't know how we can talk back and forth to each other as if we're waiting for some kind or returns to come in. More and more black kids are being kept out of school because of the directly traceable wide variety of policies and decisions and options that have been taken in DOJ and the Department of Education. Without any question, countless numbers of blacks in the workplace are losing what little security and entry and promotion that they had.

Since I am going to be in this for the rest of the 98th Congress, I want to begin to prepare in some detail the record on this. I can't do it like Commissioner Berry, but I think we can begin to pull together all of these committees—and I do want to thank you for your willingness to come before these committees because it gives us our very best opportunity to begin to sort out what there is and what there isn't.

Now, finally, before we turn to the Commissioner, I want to tell you the extent of my disturbance, because now that we're speaking to each other, we understand each other, and I won't believe these press releases. But I want you to know where this Member is coming from.

You see, I reserve your right to have a different view of how equality of opportunity in this country ought to move forward. But there are some lines in this business, and when you or your department, or your administration, cross the lines into improper activity, or any kind of direct overt attempt to reverse these processes, that would leave open whether you are fulfilling your oath. I think you would want this Member to move as quickly as he could on anybody that would be undercutting the civil rights progress that has been made so painfully in the history of this country.

I am watching that. I am not entirely certain about the legality of some, if not many, of the practices and decisions that have come specifically from your Department, but also from a wider range that weave inferences that can be made about what is being done here. If these reversals in civil rights practice have a basis, I am going to fully prosecute whatever remedies that are available in our law because I think nothing is more criminal in our Government than to find those who are charged with this responsibility to be overtly or covertly attempting to dismantle this process. I want you to know that is precisely where I'm coming from on this, because I am not entirely confident about the propriety and the legality of what is being done here. That is why I put it in this context to you very directly.

Mr. **Reynolds**. Congressman, I appreciate that. I would be surprised if you viewed your responsibility any less than that. I think that is exactly what your charge is and I am perfectly comfortable with the positions that we have taken. I think they can withstand scrutiny and I welcome that scrutiny on a regular basis.

Mr. **Conyers**. Thank you very much.

Commissioner Berry.

Dr. **Berry**. Well, all I wanted to say—and I don't want to start talking about affirmative action and busing and issues like that, because that was not the subject of the hearing. But since you did, I don't want to leave it.

I don't want to leave unrebutted on the record some of the assertions that the Assistant Attorney General made, that he seems to be making increasingly, in a wide variety of forums, most of which are based on inaccuracies in portraying what has happened under affirmative action and school desegregation.

By the way, there is evidence that when a court of law has found discrimination against women or minorities has taken place in employment and quota relief is ordered, that some remedy works for women and minorities; that is, they get jobs. There is evidence that has happened, over-and-over, time-and-time again. One may not like that remedy and one may quarrel with it, but to assert that nothing has happened based on it is just factually incorrect. One may even argue that one has another remedy that would make even more of them get jobs, but to argue that nothing has happened is again factually incorrect.

Also, in desegregating schools, I have often read about the Assistant Attorney General talking about alternatives to desegregation which will focus on quality. I am reminded that one of the first things the administration did was to cut out the entire budget for the Emergency School Assistance Act, which was to provide quality education in schools that were impacted and were either trying to desegregate or couldn't desegregate. I wonder how one squares those two. But there are a lot of things that go on that make you feel like it is sort of a fantasy land sometimes.

Another thing is that I never hear any remedies that are suggested about what to do in schools that are desegregated, where there are continuing problems, like too many school suspensions, students not engaged in extracurricular activities, the failure to employ minorities and the like. It is all about how busing hasn't worked and you can't do that, you have got to have an alternative, which ignores all the evidence of all the places where busing has been part of a school desegregation plan as a last resort and where it has worked.

About a month ago there was a big article in the New York Times Magazine on this very subject. The Commission has lots of information available which we have shared and would love to share again and again with the Assistant Attorney General if he has some problems on that score.

But to get back to the point of this hearing, of what will be the effect on people if, in fact, we adopt the notion the Assistant Attorney General has about what the law requires. Quite clearly, adopted that position, handicapped students, if one who needed physical access would have access maybe to the student aid office—and that's about all—on the campuses. Women could be ascribed to certain programs on campuses. One might think that's a good thing—I don't know—but without anybody saying that is discrimination.

In point of fact, it seems to me to keep arguing that *North Haven* requires, compels—I keep hearing the word "we are compelled to do this because of *North Haven*"—it is just patently inaccurate. The Department is not compelled to do anything in this regard based on *North Haven*.

It seems to me that the burden of proof ought to be on the Justice Department and the Assistant Attorney General, if they want to say that four administrations and all those lawyers we all wrong about what this required, that the burden of proof is on them to assert this, and prove it, especially without a Supreme Court decision to the contrary, rather than putting the burden of proof on people to disprove what they have asserted.

Finally, Mr. Chairman, it seems to me, when we are in areas that we are concerned about, like civil rights, we overlook the broader picture, which is that—and I say this from the standpoint of a person who works in constitutional history and law. We have an administration which, across the board, it seems to me, in a lot of areas, that believes that rather than asking the Congress to change a law and seeing if they can get it voted and enacted is simply appointing people and having them use their discretion to try to undermine the existing law. Those of us who care about civil rights see it happening in this important area. But if you were to talk to anybody who has jurisdiction over any of the other subcommittees, you would find they were having similar problems.

Mr. **Singleton**. Mr. Chairman, I would like to also respond, if I may, to Mr. Conyers' remarks. I would like to echo what Mr. Reynolds has stated in terms of inviting the scutiny that you suggested.

I also want to assure the Member that I, personally, have no intention, either covertly or implicitly, of violating any law. I do want to state, however, that we may have differences of opinion sometimes in terms of how we might go about obtaining those very goals we all feel very dearly about. I would like to know that you will give us at least the benefit of the doubt as we begin to investigate whether or not the old policies and procedures that we have been using for the past 20 years are still valid in the dynamic society that we have.

The discrimination we face today is not as overt as it once was. It is much more subtle. The types of remedies and procedures and policies that we need to come up with must be directed toward that very subtle racism and discrimination.

Mr. **Conyers**. There is nothing subtle about what's going on.

Mr. **Singleton**. Mr. Conyers, if I may, I would like to finish.

As we go about that process of coming up with some new procedures, I hope that we will not be second-guessed as being racists or somehow trying to turn the clock back on the very important gains that we have made in the civil rights area.

Mr. CONYERS. Well, sir, this isn't just a personal discussion in a room in Washington today. I am talking about the reports and studies and examinations and scrutiny that has been visited upon this subject by a rather substantial number of organizations and their lawyers who are watching this matter. This isn't just a personal little quarrel that somebody is picking in a room. We're talking about the report of the Leadership Conference on Civil Rights; we are talking about the NAACP studies on this matter; we are talking about any number of lawyers and civil rights groups that have been in this subject matter with as much concern as you and I, and probably for a longer period of time. So it isn't a matter of a few Members of Congress. We're talking about a rather substantial body of opinion that is trying to interpret what you are doing and what you mean by these alternative remedies that you keep talking about, as if there is some new period in this country.

We have been faced with racism and discrimination for hundreds of years. The situation is now being aggravated by the economic circumstances that we find ourselves in in this country. What we are trying to find out, with these two subcommittees, and at least one other in the Education and Labor Committee, is what these changes that you have been moving about with, in sometimes a very unfair, sometimes a very improper, sometimes in a very questionable way, how they are helping, if you really honestly believe them—and I believe you—how they are helping. And if they are hurting, as many of us have no question about, what we can do to make this thing right.

I think, Mr. Chairman, this is a very, very important set of hearings that you and my colleague from California have put together.

Mr. SIMON. I thank you.

If I may just direct two brief questions specifically to you, Mr. Reynolds, and Mr. Singleton may wish to comment.

If we find it necessary, in order to make clear that we think Pell grants and college work study and GSL's have to have an institution-wide application as far as discrimination, that we say to Southern Illinois University, if you are receiving students who have GSL's, Pell grants, and college work studies, you can't practice discrimination, period; if we feel the only way we are going to move to make that clear is by passing a law, will you, as the principal advocate of civil rights in this administration, ask the President to sign such a bill?

Mr. REYNOLDS. Well, I would certainly be more than happy to work with the Congress on such a bill. I would have to see what the bill said. But the concept is not one that offends me. I think Congress certainly can do that, and if Congress were to make that call, it would be a bill that would be a strong civil rights division.

I mean, I can't speak obviously today for the whole administration, but if you are asking me whether that kind of legislation is something that I have any resistance or problem with, or that I would have a problem supporting, generally speaking, I think the Congress could do that and that would be one way to address what seems to be a limitation now that the courts have found in the existing legislation.

Mr. SIMON. One final question.

You referred to the *Weber* case, or my colleague has, and in your statement you say "We have declined, however, to impose racial quotas for students or faculty" and so forth. We are in a situation where some people have been handicapped. It is little bit as if Don Edwards and I get into a race and I break his ankle and I say "All right, let's race. We'll plow ahead. No additional assistance for either one of us." I have a slight advantage against Don Edwards—and I need that kind of advantage.

What about racial goals, if I can put it just a little different way? Do you find racial goals offensive?

Mr. REYNOLDS. I think there is a lot that is lost in the translation when we get into this subject. How would you define a racial goal to be different from a racial quota?

Mr. SIMON. I don't know how you define quota here, but I assume, when you say——

Mr. REYNOLDS. Well, you give me the definitions.

Mr. SIMON. When you say quota, you're talking about something that is rigid, that you have to have 20 percent black enrollment, or 20 percent Hispanic enrollment, or 20 percent female enrollment. When I talk about goals, I guess I am talking about something that may not be quite that rigid but that says these are things we ought to be aiming toward. If you get 19 percent or 18 percent, no one is going to say you have violated the law.

Mr. REYNOLDS. Well, in our remedies, we do use a goal with respect to the recruitment effort. If your suggestion is you would have a benchmark against which to measure the activities, the employment activity, and if you are saying that your goal would not permit any preference to anybody based on his or her race or sex, so that your hiring would be on a nondiscriminatory basis, and you would not bring people into the workforce solely on the basis of that characteristic, but that you would hire the most qualified people that you had in the applicant pool, and you had a goal out there as a benchmark against which you were measuring it, depending on how you selected your goal, as long as it's race neutral, I don't have a problem with that.

It is where your goal or your quota depends on counting into or including into the equation a factor that says we are going to give a preference for somebody based on that person's race or sex. I think when you get to that point you have moved beyond the point where the law says you can go with regard to discrimination in this country. We cannot give to anybody, black or white, male or female, based on the immutable characteristic a preference that advances that person who is not a victim over somebody who is more qualified and is an innocent bystander.

Mr. SIMON. I think the Court has ruled that we need not be race neutral. The Court has not said you have to put in people who are not qualified, but that once you establish those qualifications, race or sex or national background can legitimately be taken into consideration.

I guess what we are concerned with is that we sense the Justice Department is backing off and being as narrow as possible in its definitions and its goals, when we want to create a society that has opportunities as broad as possible. I guess the one thing this whole hearing is about is an attempt, so to speak, to hold your feet to the fire and say we are concerned.

Mr. Reynolds. I understand that. I think the Court said that you cannot use a goal when it is indicated in the higher education area in *Bakke*, that at least one Justice said that you might be able to factor into the equation the individual's race, but that that would not tolerate the university setting a goal and using a goal as a basis for achieving any particular end. That was one Justice, and there were four on either side of that, four saying you couldn't even give any consideration at all to race, and four saying you could give considerably more consideration to race. But Justice Powell in his *Bakke* decision came down on the side of saying that, while a goal was not tolerable, he thought the first amendment implication with regard to a diverse student body in the higher education area would for him tolerate the consideration to some limited extent of one's race. But there again, it was not in the context of a goal.

Dr. Berry. Mr. Simon, I really want to comment on your first question, but I will just say in passing that the Supreme Court has, of course, said almost exactly what you said, that you don't have to be race neutral and you can have goals and you can take race into account, and that even more, when there is a legal finding of discrimination that has taken place, you may even have quotas and that there is nothing wrong with it.

But in any case, my point about your question as to whether the administration would support a law that would say these student aid programs are financial assistance, in my opinion that would be taking us down the road, if we did that, that we are about to follow on the tax-exempt schools issue on title VI.

If every single time this administration or any other wants to do something to undermine one of those statutes, we have to pass another law to see to it that they don't do it. Then, if we introduce the bill and it doesn't pass, "you see, you didn't get it passed; therefore, we were right." If you introduce it and get it passed, then the next time they find some other way of narrowing the statute. They will say "Well, you have to go get another law passed."

I would hope that the Supreme Court, depending on what happens in *Grove City*, if they defined program specific in any different way than they did in *North Haven*, that they would adopt a rational rule, which is that student aid programs obviously cover the whole institution. I have every confidence, based on the votes in *North Haven*, that they would.

I think it would be premature and in many ways would undermine the whole texture of civil rights enforcement to accede to the notion that we have to pass a law every time something happens.

Mr. Simon. If I could just comment that I agree at this point. We may reach a point later where passing a law is necessary, and I hope to bring up one of my witnesses supporting such a change if it is necessary—the Assistant Attorney General.

Mr. Conyers. Mr. Chairman, might I have one moment here on this question?

Mr. **Simon**. We haven't yet let my colleague get a word in edgewise.

Mr. **Edwards**. I think the discussion has been very valuable.

Without saying, Mr. Reynolds, that all of your interpretations and opinions and directions come from court decisions, I think you ought to tell the committee and the people that you personally, and your colleagues in Justice and the administration, advocate a more narrow coverage of title VI, title IX, and section 504; isn't that an honest statement? You do, as a matter of policy, as a matter of politics, as a matter of the way you feel?

Mr. **Reynolds**. More narrow than what?

Mr. **Edwards**. Than the last four or five administrations.

Mr. **Reynolds**. Well, I haven't gone back and examined them. My sense is that the position we are taking now, after *North Haven*, is one that is program specific and that that was not advanced before, so in that sense I think that would be accurate.

I don't know how far back you want to go. My sense is that the program-specific interpretation of these laws is one that was not advanced by administrations before *North Haven*, and after the Supreme Court has spoken. That is a position we are advancing.

Mr. **Edwards**. Well the heart of our problem is in this next question—and I will be my last question: What harm is done by a broad application or coverage of these antidiscrimination prohibitions? That's what the protectees want; that's what the black people of America want; that's what the brown people want; that's what the women want. You see, you are all alone in saying you're going to have a narrow interpretation. There isn't anybody, except just an occasional person who works for the administration, who comes in here that tells us you're on the right track.

Mr. **Reynolds**. Well, I don't think there is anything wrong at all with a broad interpretation of these laws. I do think, though, that we have a responsibility—and Congress has made it clear in a number of areas, certainly outside civil rights if not within civil rights—that the courts have a responsibility to pay attention to what the laws said. When you have interpretations of the laws that are on the books, whether you are talking about a *Weber*, where the Supreme Court has spoken, and that has to be followed until and until it is altered in any way, or you're talking about a *North Haven*, or you're talking about a *Davis* case, or you're talking about any other Supreme Court decision, the Attorney General of the United States is not at liberty to disregard those Supreme Court decisions.

I don't think that suggests they are saying there is anything wrong with a broader interpretation in the philosophical sense, but it does mean that the Congress of the United States is the one that has enacted these laws, and we are a government by laws and we cannot disregard them, and where the Supreme Court has spoken to the interpretation, whether we like it or don't like it, we aren't at liberty to disregard those decisions.

Mr. **Edwards**. But you are at liberty to urge the courts and to urge the various officers of your administration, and you are urging them, including the courts, to narrow the application of the laws.

Mr. **Reynolds**. We are at liberty to urge them to follow the law as it is on the books, and we are urging them to do that. Certainly, if Congress views that interpretation as being narrower than it prefers, then Congress ought to pass another law, such as the one that Chairman Simon suggested, to treat that problem. But it is not the executive branch's function to redraft laws, and where we are parting, if you will, from prior administrations, we are taking our lead from the Supreme Court. Whether one likes or does not like that decision is a whole different question that is more properly addressed to Congress than it is to the executive branch.

Mr. **Simon**. Mr. Conyers.

Mr. **Conyers**. Mr. Chairman, you have raised the most fundamental question of the day here. I wasn't sure if I got a response—and I suppose this gets us right to the heart of it. I have to go back over it because I wasn't sure what I heard.

Now, I came to this meeting this morning with the simplistic understanding that goals and timetables that are race conscious have been explicitly affirmed as the law of the land in court decisions. Is that your understanding, Mr. Reynolds?

Mr. **Reynolds**. Certainly in *Weber*, and I would say where it is included in legislation in the *Fullilove* context, that there are two Supreme Court decisions that have suggested in those contexts that that is a proper course.

Mr. **Conyers**. Do you have any problems with that?

Mr. **Reynolds**. Do I have any problems with that?

Mr. **Conyers**. Yes, sir, in fully supporting and enforcing that theory in carrying out your duties in the Civil Rights Division.

Mr. **Reynolds**. No; I think if the Supreme Court speaks, then we are supposed to carry out our responsibility by enforcing those decisions.

Mr. **Conyers**. Are you doing that?

Mr. **Reynolds**. We are doing that.

Mr. **Conyers**. Then why do you keep raising this old bugaboo about quotas, since race-conscious goals and timetables can easily be confusing kinds of language? I mean, if you realize that, why then would you be objecting to many of the kinds of interventions that you have been making in education and in employment, both public and private, even where there are voluntary agreements?

Mr. **Reynolds**. Well, the area that we have been filing our briefs in is public education. The cases involve issues different than the ones that the court dealt with in both *Fullilove* and *Weber*. The issue that needs to be addressed, and that the court has not yet addressed—indeed, it specifically declined to address in those cases—is whether under the Constitution and under title VII, a public employer can, indeed, enter into a consent decree that has preferential hiring based on race or sex. That is an issue that the Supreme Court has not spoken to.

Mr. **Conyers**. What is your view of it as the head of the Civil Rights Division?

Mr. **Reynolds**. My view is the public employer cannot enter into that kind of consent decree, and we filed with the courts briefs in that regard in Boston, New Orleans, and Detroit.

Mr. **Conyers**. I presume that you——

Mr. **Reynolds**. And in Virginia.

Mr. **Conyers.** I presume that you rely on the Congress and other court decisions.

Mr. **Reynolds.** That's right. We rely on the Congress and——

Mr. **Conyers.** And it is your view that that will expand the abilities and opportunities of minorities in that regard?

Mr. **Reynolds.** It is my view that the way to expand the ability and opportunities of minorities in the employment area is to move as fast as we can in the direction of a race-neutral hiring system——

Mr. **Conyers.** No; I mean in terms of specific interventions we have been discussing. Is it your position that your intervention on that side of the question, in the way you have just described, is going to be beneficial to the struggle for equality and justice?

Mr. **Reynolds.** I certainly think it would be beneficial for the struggle for equality and justice, because I think that struggle is one that pertains to all people without regard to race, sex, or natinal origin, their color or their religion, and it is beneficial to that struggle to establish firmly in the law, as I think it now is, that we cannot discriminate whether we are disadvantaging one race and advantaging another or we flip the coin and we're doing the same thing with different people on the other side of the coin.

Discrimination is the same evil and the courts have said that what we protect in this country is equal opportunity, not equal results, and it seems to me we are definitely advancing the cause of justice and equality of opportunity by taking that stand.

Mr. **Conyers.** I could imagine an infinite number of circumstances in which someone might be hurt, laid off, not hired, as a result of a race-conscious goal. I mean, it is sort of inevitable in a shrinking employment circumstance that we find ourselves.

Mr. **Reynolds.** I don't think anyone should be laid off or terminated or not hired because of a race-cónscious goal. We have just filed——

Mr. **Conyers.** That's the unavoidable result in Detroit. I mean, what else can you do? What are you saying when you say you don't want anybody to be hurt? Nobody wants anybody to be hurt, but in our social system we have to choose—and this is what makes it such a burning issue in the hearts and minds of our countrymen—between a seniority philosophy between a position we took many decades to fasten into labor relations, and a race conscious goal or affirmative action policy that might intervene with that. Somebody is going to be disadvantaged. We certainly know of all the blacks that have been historically cut out of work and education have been permanently disadvantaged.

You couldn't be looking for a plan that hurts nobody. Or could you?

Mr. **Reynolds.** I think that what we all ought to be looking for is a plan where nobody is treated one way or another based on his or her race or sex.

Mr. **Conyers.** But we just agreed that race-conscious goals and timetables are the law of the land.

Mr. **Reynolds.** No, we didn't agree to that. We agreed that in——

Mr. **Conyers.** Well, I thought that you had.

Mr. REYNOLDS. We agreed that the Court in *Weber* and *Fullilove* suggested that in those discrete areas that was a permissible way to use it. But the Court also did not say that it is the law of the land in the area of public employment. That is an issue that the Court certainly was prepared to take a look at in Boston, which is the layoff case, that it granted certiorari on, and then because the people who had been laid off had been rehired, the Court sent it back to determine whether it was still a live controversy. It has other cases up there presenting that same issue, but the Court has, on at least two and I think three occasions now, indicated an interest in taking a hard look at that very issue—whether goals and timetables of a race-conscious nature are, indeed, an available remedy in the public employment sector.

On both of the occasions where the Court granted certiorari to hear that question, events then took place that suggested the controversy was no longer a live controversy and so they dismissed the cases and didn't hear the issue. But the Supreme Court has made it clear that that's an issue that it still has not decided and is interested in deciding.

Mr. CONYERS. But getting back to Don Edwards' question, why do you always take the more restrictive position in these matters? Why do you take the one that is sure to accomplish the least, create the slowest amount of progress, and constitute what is perceived to be a reversal of the study by partisan practices of many administrations?

In other words, you can't go around looking for language in the Supreme Court decisions on every point. Rarely are these decisions ever decided unanimously, and the majorities are hard to discern.

I mean, we are in very, very sensitive, new, difficult legal and judicial land and territory, sir. I can't believe that you have said we aren't at liberty to disregard the courts so many times here today as if there is some inference that there is somebody around here that wants you to run over the Court and disregard the intent of Congress—I am one of those intenders you keep talking about.

Why do you keep looking for the de minimis approach that constitutes the reversal that the civil rights organizations and lawyers are fairly unanimous in perceiving here? It escapes me, then, that you can add to it that this is what is going to help black people, women, Latinos, and students and the handicapped.

Mr. REYNOLDS. I think a lot depends—well, a lot depends on exactly how one seeks to look at the issue. We brought just last week a case against a very large apartment owner, having 10 different apartment complexes throughout California, thousands of people. That owner was applying a quota to deny minorities entrance into those units once he got a certain number of minorities in the housing unit.

Now, that ceiling, if you will, the use of a quota, which goes on—we see it in employment, we see it in housing—that is as offensive to the civil rights laws as anything that one can imagine.

Now, you're telling me that I take a position that is restrictive and disadvantaged to minorities; and yet you disregard the fact that a lot of the litigation in this area that is challenging quotas is aimed at the kinds of practices out there where people are using these quotas to slam the door once they get the number they are supposed to get that somebody arbitrarily assigns to them.

Mr. **Conyers**. Well, I'm glad that you——

Mr. **Reynolds**. That is what we are supposed to be going after with a vengence, and that is what we are going after with a vengence. A quota, whether it is used in that way or any other way, disadvantages someone because of race and is something that should not be tolerated in the law and I don't think is tolerated in the law.

I think it depends in large measure on whether one focuses on that kind of case or you focus on the *Boston* layoff case, or the *Detroit* case, in trying to discuss these issues. My point is that it is the same kind of discrimination, which ever way you want to slice it, in those cases. We have those cases more frequently, in fact, than we have the others, and we go after them and we bring lawsuits. But nobody says anything about those lawsuits. All they do is they concentrate on the lawsuit that we bring with regard to the police department.

The principle is the same principle. You can't use numerical hiring techniques that are based on race to give somebody who has not been a victim of discrimination an advantage in getting into the work force or into the housing unit or into the classroom.

Mr. **Conyers**. I think you have misstated the law on the subject. You're going to make a constitutional student out of me yet, because it is incredible to me what you have said here today. I am not going to comment on it more, but I want to thank you very much for the willingness which you have come before these committees and I hope this won't be the last time. I have a sense that we may have to continue discussing this matter.

I thank you for your generosity of time.

Mr. **Simon**. I thank you.

Dr. **Berry**. Mr. Simon——

Mr. **Simon**. I don't mean to be cutting this off, but I think we probably have gone full circle here. I want to thank——

Dr. **Berry**. Fifteen seconds, please.

Mr. **Simon**. All right. You get 2 minutes here.

Dr. **Berry**. Two seconds.

I just want to say that quotas, where they are used to keep somebody out of a place, who has no opportunity to go there, as in the housing case, are not the same thing, either in the law as determined by the Court, as a quota where you find that somebody has been discriminating to keep someone out, and you say you have got to get at least that many who are qualified to come in. They are not exactly the same thing and no one ignores what they do in the first type of case. It is just that we know the difference and we recognize the difference.

Mr. **Simon**. We thank all three of you.

Mr. Singleton, also, when you have your rule perfected, if I can use that word, on the GSL's, we would be very interested in seeing that as soon as we could.

We thank you very, very much for being here today. The hearing stands adjourned.

[Whereupon, at 11:45 a.m., the subcommittees were adjourned.]

HEARINGS ON HIGHER EDUCATION CIVIL RIGHTS ENFORCEMENT

WEDNESDAY, MAY 25, 1983

House of Representatives, Subcommittee on Postsecondary Education, Committee on Education and Labor; Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Washington, D.C.

The subcommittees met in joint session, pursuant to call, at 9:30 a.m., in room 2261, Rayburn House Office Building, Hon. Don Edwards (chairman of the Subcommittee on Civil and Constitutional Rights) presiding.

Members present: Representatives Edwards, Simon, Schroeder, Harrison, Sensenbrenner, Petri, and Packard.

Staff present: For Postsecondary Education—William A. Blakey, counsel; Maryln L. McAdam, staff assistant; Lisa Phillips, staff assistant; Richard K. Scotch, Congressional Science Fellow; for Civil and Constitutional Rights—Ivy L. Davis, assistant counsel; Philip Kiko, associate counsel.

Mr. Edwards. The committee will come to order.

We are continuing this morning joint hearings by the Subcommittee on Postsecondary Education and the Subcommittee on Civil and Constitutional Rights.

In testimony before these joint subcommittees, Mr. Brad Reynolds acknowledged that the Federal Government is seeking to narrow the application of the provisions which prohibit discrimination against minorities, women, and handicapped in federally assisted programs.

Mr. Reynolds admitted that these efforts would exempt thousands of programs or activities from coverage of title VI, title IX, and section 504.

He suggested the justification for this is compelled by Supreme Court decisions such as *North Haven* and *Davis*, and by the plain meaning of these statutes and their legislative history.

Mr. Singleton announced the Government's intention to submit for public comment a notice of proposed rulemaking which would exempt guaranteed student loans from coverage of these provisions on the grounds that they no longer constitute Federal financial assistance.

Commissioner Berry warned that the combined impact of this will be devastating to any meaningful civil rights enforcement. She said it will deny to millions of Americans the protections of these civil rights laws.

Commissioner Berry forcefully argued that the attempt to narrow the coverage of these provisions is compelled not by judicial precedence, but by policy preferences of this administration.

Is Congress, as Messrs. Reynolds and Singleton suggested, required to revisit the civil rights statutes and reaffirm prior broad interpretations?

Commissioner Berry believes it is not necessary. She suggests that such a strategy smacks of the position advocated by the administration in the *Bob Jones* case decided yesterday by the Supreme Court.

I certainly appreciate Chairman Simon and his colleagues joining our two subcommittees in this important review and look forward to continuing these discussions, and I yield to my cochairman, the gentleman from Illinois, Mr. Simon.

Mr. SIMON. Thank you very much, Mr. Chairman. I will simply enter my statement in the record. I think these hearings are extremely important.

I think we clearly have to hold some feet to the fire in this area of enforcement of civil rights. I hope these hearings will help to do this.

Let me just add at the beginning that this is one of these horrible mornings where I am being pulled about 12 different ways, so I am going to be in and out. But that does not indicate any lack of interest in this subject area that is so vital.

I appreciate the witnesses who have been very helpful. I think the hearings have been helpful.

[The opening statement of Hon. Paul Simon follows:]

OPENING STATEMENT OF HON. PAUL SIMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS AND CHAIRMAN OF THE SUBCOMMITTEE ON POSTSECONDARY EDUCATION

Today is the last of three hearings held jointly by the Subcommittee on Postsecondary Education and the Subcommittee on Civil and Constitutional Rights. We have heard from State college and university presidents impacted by consent decrees, and title VI administrative decisions and desegregation plans. We have heard from administration witnesses on the enforcement of not only title VI but title IX of the Education Amendments of 1972 and section 504 of the Rehabilitation Act of 1973. It appears as if the enforcement of these civil rights statutes is less than enthusiastic on the part of the administration and that the conflicting lower court rulings need to be resolved with the vigorous assistance of Department of Justice appeals. However, this does not appear to be the course of action being taken by the Department of Justice or the Department of Education.

Our witnesses today will speak from the perspective of the courtroom. Today's panel has litigated cases under all three civil rights statutes in areas of higher education and can share with us the strengths and weaknesses of the current enforcement policies of the administration.

The importance of these hearings is to look for patterns of neglect in administration policy on civil rights in higher education. We, as a nation, have too much at stake in providing equal educational opportunity to allow the selective enforcement, or weak enforcement of the law. This policy excludes women, minorities, and handicapped people from the opportunity for a higher education and access to all programs which any individual may qualify to participate in regardless of gender, race, or disability.

Mr. EDWARDS. I thank the cochairman. I also wonder how this House of Representatives can operate when we operate on a 3-day-a-week schedule with all the responsibilities that each of us have.

Does the gentleman from Wisconsin, Mr. Sensenbrenner, have a statement?

Mr. **SENSENBRENNER**. Yes, Mr. Chairman. As the Chair knows, at the last hearing on Thursday of last week I lodged a point of order against testimony that had been submitted by the witnesses that were scheduled then as not being in conformity with the committee's directive requiring prefiling of testimony so that it could be reviewed.

The point of order is now moot. I would like to ask unanimous consent to withdraw it, but with the admonition that I would hope the staff on both sides of the aisle in arranging with witnesses to appear before this subcommittee would be a little bit stricter in having the witnesses comply with the committee's directive that the testimony be brought in at least a day before the hearing is to be held so that everybody will have an adequate chance to review it.

Mr. **EDWARDS**. I thank the gentleman, and we have instructed the staff to instruct and request that all the witnesses comply with the committee's rules. We thank the gentleman.

Without objection, the point of order is withdrawn.

We are fortunate to have as our first witness, the privilege of hearing from our colleague from Rhode Island, the very distinguished Hon. Claudine Schneider.

Congresswoman Schneider, we welcome you. We are delighted you are here. Without objection, your entire statement will be made a part of the record and you may continue at your own pace.

STATEMENT OF HON. CLAUDINE SCHNEIDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mrs. **SCHNEIDER**. Thank you. I am very honored to have the opportunity to join with all of you.

I would like to commend Chairman Edwards and Chairman Simon and my colleague, Mr. Sensenbrenner, for your efforts to bring forward hearings to discuss the very important issue of civil rights and the cause of equal opportunities in education.

I am here specifically to address the whole issue of title IX of the 1972 Education Act. Title IX, as you know, prohibits gender discrimination in those educational institutions which receive Federal financial assistance and since its enactment in 1974, it has really served to guarantee equal educational opportunities for men and women alike.

Many of you may have heard stories about title IX and how it actually turned around blatant instances of discrimination, but for some of you who may not be familiar with some examples, let me just bring a few to your attention.

In 1972, the New York State College of Agriculture at Cornell required women to have SAT scores 30 to 40 percent higher than those of men.

In another instance, in Ohio, an elementary school had a policy of assigning only male teachers to grades 4 through 7 while female teachers were responsible to teach kindergarten through grade 3.

Finally, if you need any more fuel for the fire, the Strong Vocational Interest Blank tests, which were utilized by high schools as a career counseling tool, at one time used pink tests which emphasized traditional female occupations and blue tests which included the so-called male fields of mathematics, science, and engineering.

Stories such as these are abundant, many of which are documented in the National Coalition on Women and Girls in Education's 1981 booklet entitled "Title IX: The Half Full, Half Empty Glass."

Given the success stories that have been associated with the enforcement of title IX, one wonders why efforts are currently under way to alter the scope of the regulation.

You may recall that last year legislation was introduced by Senator Orrin Hatch which called for title IX enforcement in those cases where specific educational programs received Federal funds.

In response, I introduced legislation, H.R. 268, which reaffirmed the House's support for the broad coverage of title IX. Over 150 of my colleagues joined in supporting the legislation.

This year Senator Hatch has yet to introduce the legislation, and as far as I know, has no intentions of doing so. However, the lack of congressional opposition does not necessarily mean that title IX is safe because this year there have been some court decisions that have interpreted title IX coverage in a much more narrow manner than has been done since its enactment in 1974.

For instance, in the *University of Richmond* v. *Bell* and *Hillsdale College* v. *Department of HEW,* title IX was held to cover only directly assisted education programs. Despite these narrow interpretations, however, which largely ignore the past 8 years of broad title IX coverage, those agencies who were designed to oversee title IX enforcement did not contest the decision.

Litigation involving title IX has also been taken all the way to the Supreme Court. In the *Grove City College* v. *Bell* case, the Third Circuit Court of Appeals ruled that Federal grants are financial assistance for the purposes of civil rights coverage and that an entire institution is the education program specified in the law when it receives general assistance through Federal student aid.

Grove City College has appealed that decision and the Supreme Court will render its decision later this year.

One might ask what business it is of the Congress to interfere in judicial decisions. Well, my response is that Congress has had every right to keep a watchful eye on the interpretation of those laws which we so hopefully, cautiously, draw up, and in many cases we may need to reassert the clear intent of the law.

In the case of title IX, Congress enacted a regulation which stated, and I quote,

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

The key here is the definition of the phrase "educational program or activity." Does educational program refer to each specific program within the institution or can an educational program be the institution itself?

Disregarding judicial precedents over the past 10 years which have interpreted title IX in its broad sense, I feel one has to look at the original author, Senator Birch Bayh, for the original intent of the regulation.

Citing the 118 Congressional Record of 1972, Senator Bayh stated that title IX will be, and I quote, "a strong and comprehensive measure * * * against sex discrimination that reaches into all facets of education."

Clearly, title IX in its comprehensive coverage has been extremely effective over the past decade in prohibiting gender discrimination in education. Is there any need to shift gears and narrow the scope of the law? I think not.

As one can see from the inequities of the past, title IX can be credited in large part with many of the gains made by women in the areas of technical and vocational education, in the areas of professional degree programs or school athletics.

For example, in 1972 women comprised only 43 percent of the total enrollment at 4 year colleges. Today that figure has jumped to 52 percent.

By 1980, the percentage of female students in federally funded agriculture, technical trade and industrial programs has risen dramatically from 8 percent in 1972 to 28 percent now.

Moreover, female enrollment in dental schools has risen by 101 percent; in veterinary schools by 120 percent; and in law schools by 337 percent. I can't help but mention my own bias that perhaps much of that enrollment in many of the law schools has to do with the fact that many women feel that the only way that they can gain their equity is by going to the courts and becoming familiar with the laws.

There have also been significant increases in medical schools to the tune of a 296-percent increase. But while the gains have certainly been made, let there be no mistake about the long path that still lies ahead before true equality is achieved in any of the abovementioned areas.

The fact that the average expenditure for men's athletic programs is $1.7 million, while the figure is but $400,000 for women is a case in point.

Yet no longer will women basketball, softball and volleyball players need to share the same uniforms as they did in many schools prior to 1976.

Title IX is very much alive and well and I, with the help of my hardworking colleagues, intend to keep it that way. I invite all those members in attendance to join in reaffirming our original support for this equitable regulation.

I ask my colleagues, as well as Chairmen Simon and Edwards, to seek prompt approval of my resolution in this Congress, H.R. 190, in order to send a clear message that the Congress supports the original comprehensive coverage of the title IX regulation.

I thank you very much, members of the committee, for providing me with the opportunity to testify on behalf of equal access to education for men and women alike.

Thank you very much.

Mr. Edwards. Well, thank you, Mrs. Schneider, for excellent testimony. We will be operating under the 5-minute rule. The gentleman from Illinois, Mr. Simon.

Mr. Simon. First of all, I thank you. I thank you for the introduction of the resolution.

I guess I have one concern and that is if we were to move ahead with your resolution and it were to be defeated, the wrong message might get out there.

Mrs. **Schneider**. That is a possibility. However, whenever I introduce a resolution or a bill, I always move ahead with the intention of it passing and winning, and I am currently in the process of obtaining cosponsors, and so far I am meeting hardly any opposition.

So I would not suggest that it move ahead for a vote until we feel confident that we can succeed, and so I would not ask you to do it next week, but rather a couple of weeks from now.

Mr. **Simon**. I thank you for your testimony and your leadership.

Mrs. **Schneider**. You are welcome.

Mr. **Edwards**. The gentleman from Wisconsin.

Mr. **Sensenbrenner**. Thank you very much. I have one very brief question to ask of our colleague from Rhode Island.

Many of the colleges and universities, particularly small ones that are away from metropolitan areas, do have on-campus housing requirements for their students: One, to keep better tabs on them and, two, because there just aren't any places to stay in many of the smaller towns.

Because these facilities might not be constructed equally between males and females, there are differing numbers of students that can be admitted by sex in any one year that are determined by the number of vacancies in the housing that is provided.

Do any of the statistics that you have cited take into account the fact that there might not be as many girls' dorms as boys' dorms?

Mrs. **Schneider**. That is a very good question. I do not have the answer to that. I don't know what the breakdown is in the majority of institutes of higher learning, but I will certainly check that out.

Mr. **Sensenbrenner**. I suppose the answer to that would be to turn them all into coed dorms, but some people might not approve of that—students, as well as alumni.

Mrs. **Schneider**. Yes. I am not sure that that is the only answer of going to coed dormitories, because from what I understand now, there is more of a trend back toward the male and female dormitories.

But in response to your question, I am sure that one of the educational associations that has surveys of that kind of information would be happy to assist me in providing the committee with that answer.

Mr. **Sensenbrenner**. I think that that would be a very relevant point. I hope that you can dig that information up.

Mrs. **Schneider**. I will certainly attempt to.

Mr. **Sensenbrenner**. I yield back the balance of my time.

Mr. **Edwards**. The gentlewoman from Colorado.

Mrs. **Schroeder**. Well, Mr. Chairman, I hope that it doesn't come as any great surprise that I am a total believer. I compliment our colleague from Rhode Island, and I just want to say that the good thing about the dorms, my understanding is that the universities have found that women can stay in men's dorms if they allocate it. You don't have to build them differently.

So they just reallocate the resources equally as that happens, and you don't have to make them coed. They are done sometimes floor by floor if they have to break the building into separate things, they don't have enough separate buildings.

But it has worked, and I don't think that that is a real roadblock. I really want to compliment you on your hard work and all you have been doing on this, Claudine.

Mrs. **Schneider**. Thank you very much for your cooperation. I am sure that as a team we could move ahead and succeed in passing this resolution.

Mr. **Edwards**. Well, title IX has certainly made it possible to make great progress in a fair treatment of female students. Isn't that correct?

Mrs. **Schneider**. Absolutely. I think that the numbers really speak for themselves, particularly in the area of offering women the opportunities to get into what have been perceived as male-dominated vocations or careers, such as the technical schools, the dentistry schools, agriculture schools, those kinds of things.

Mr. **Edwards**. Well, in the schools you mentioned, how do you think that they should operate so as to assist the implementation of title IX? Do you think that it is appropriate for the schools to keep careful records and to say that 5 years down the line we would like to have a much better record than we have now?

In other words, I am really talking about goals and timetables.

Mrs. **Schneider**. No quotas.

Mr. **Edwards**. No quotas.

Mrs. **Schneider**. As it stands right now, title IX regulations require that schools that are receiving Federal financial aid to sign an assurance that they will comply with the law.

But I think there is also the opportunity of enforcement by the Department of Education to oversee the enforcement of title IX, and it is the responsibility to make sure that it is implemented.

I don't think that we need to get involved in more paperwork. It is just a simple signoff of a paper.

Mr. **Edwards**. Aren't the schools or the athletic departments going to have to have affirmative action programs to let the women know that qualified women are invited and urged to participate in sports or to be in particular programs that might lead them into the professions?

Mrs. **Schneider**. Well, I don't know if an affirmative action program is really—I don't know if that is what we would call it or not.

But certainly I know in universities now all curriculum is open to male and female alike so that the information is there when one goes to sign up in a particular school.

Traditionally, they have now done away with the pink slips and the blue slips and any other kind of sex discrimination. So I am not sure that we need a P.R. campaign or an affirmative action campaign to really promote it.

Mr. **Edwards**. Well, some of the statistics are still appalling.

Mrs. **Schneider**. This is true.

Mr. **Edwards**. Apparently the male dominated committees that recommend tenure for professors are statistically loath to give tenure to women Ph.D.'s or professors. Isn't that correct?

Mrs. **Schneider**. This is true.

Mr. **Edwards**. So it has to be some effort made there to overcome decades and decades of discrimination.

Mrs. Schneider. Absolutely. As to how we get involved in the internal politics of those universities, you know, certainly title IX will play a role in that effort.

Mr. Edwards. Well, I join my colleagues on the committee in congratulating you on the bill and the work you are doing. We thank you very much for your contribution today.

Mrs. Schneider. Thank you for your attentiveness.

Mr. Edwards. The next witnesses will constitute a panel, Ms. Margaret Kohn, attorney at law, Women's National Law Center, Washington, D.C.; Mr. Elliot C. Lichtman, attorney at law, from the firm of Rauh, Silard & Lichtman here in Washington; Judge Reese Robrahn; and our good friend and counsel to the committee, too, off and on, Antonia Hernandez, who is counsel for the Mexican American Legal Defense and Education Fund.

If you can all come up here.

Without objection, all of the four statements will be made a part of the record. Ms. Kohn is first.

STATEMENT OF MARGARET KOHN, ATTORNEY AT LAW, WOMEN'S NATIONAL LAW CENTER, WASHINGTON, D.C.

Ms. Kohn. Chairman Edwards, and members of the subcommittees, good morning. My name is Margaret Kohn, and I am an attorney with the National Women's Law Center. Thank you for inviting me to testify here today.

Our testimony is given on behalf of 12 members of the National Coalition for Women and Girls in Education. I believe that you have a list of those organizations, so I will not repeat them.

I am here to talk about title IX and its enforcement, and the way in which the Department of Education and the Department of Justice have worked to interfere with the enforcement of title IX, to cut back on its enforcement, and to reinterpret the law in a manner that is far more restrictive than has been the case in the past.

Both Mr. Reynolds, the Assistant Attorney General for Civil Rights, and Secretary Bell are attempting this reinterpretation through an effort to change the law in court decisions.

The decisions are then used I think, in an unbalanced way to justify policy changes which are inconsistent with existing regulations of the Department of Education, and are inconsistent with the interpretations of the law that the past administrations have made, both Republican and Democratic.

These actions are frightening to women's groups, teacher and student organizations because title IX is the one and only comprehensive Federal statute that prohibits sex discrimination in education.

The same actions are also giving other civil rights advocates cause for concern because of the similarity of title IX with title VI and section 504 in language and structure.

As Mr. Reynolds testified, he is interested in cutting back in the application of title IX and in its interpretation. That was most evident in the Department of Education's decision not to appeal the *University of Richmond* case, a decision that was made by Secretary Bell in conjunction with the advice that he received from the Justice Department.

Mr. Reynolds defends the decision on the grounds that the interpretation given to title IX and the authority of the Department of Education to investigate and enforce that civil rights statute was the correct interpretation.

He has also stated that that decision is required by the *North Haven Board of Education* decision that the Supreme Court issued in the spring of 1982.

I cannot stress enough that that result is not required by the *North Haven Board of Education* v. *Bell* decision. The Court in *North Haven* said that title IX is a program-specific statute, but it expressly declined to define the term "program".

It said that the issue was not addressed by the factual record of the *North Haven* situation and would have to be decided at a later point in another case.

After *North Haven*, courts have reached differing conclusions on the proper reading of program or activity. *Grove City College* v. *Bell* and *Haffer* v. *Temple University* were both decided after the *North Haven* decision was issued.

The implications of *North Haven* were brief for the third circuit in both of those courts. Each of them decided that title IX language of "program or activity" was entitled to a broad interpretation.

Even though some of the decisions which Mr. Reynolds has relied upon, including *Bennett* v. *West Texas State University*, have recently been reversed in the court of appeals. Nonetheless, in March of this year in a memorandum that he has submitted to you, as have I, he proposed to Secretary Bell that the *Richmond* decision be instituted by OCR nationwide.

This approach would extend a decision which is limited to the eastern district of Virginia in its application to an enforcement policy applicable to the entire country, and it would apply the law in the title IX case to enforcement of title VI and section 504, as well.

This is a major change. It would also impose this very restrictive analysis in States in which the courts have accorded the Office for Civil Rights far greater investigative authority and a broader interpretation of title IX.

OCR's reach is clearly broader in the States of Pennsylvania, New Jersey and Delaware, which are governed by the interpretation given by the *Grove City College* court and *Haffer* court, and OCR has greater investigative authority in the western ninth circuit States where OCR's title VI investigative responsibilities have been very clearly set out by the *United States* v. *El Camino Community College* case and are broader than what Mr. Reynolds proposes to Secretary Bell.

In addition, he has ignored the well established theory of infection as a basis for investigation and enforcement authority in any area or practice other than college or university admissions, as is shown in the memorandum.

The infection theory, which has been articulated especially by the fifth circuit, provides that the Department of Education may investigate discrimination in recipient practices outside of a federally funded program and terminate Federal funding in that program if the practices of the recipient outside the funded program infect the federally assisted activities.

The infection theory is not limited to higher education. It applies to elementary, secondary and vocational education, as well.

It is certainly not limited to admissions, since we have the recent decision in the *Iron Arrow Honor Society* v. *Bell* case from the former fifth circuit, which held that a universitywide honor society with membership limited to male students and faculty at the University of Miami was unlawful.

The March 15 memo is a good example of the lopsided case law analysis in which Mr. Reynolds frequently engages. The absence of any reference to the cases that conflict with the analysis he presents in the memo, *Grove City College, Haffer* v. *Temple University, Iron Arrow Honor Society* and the *El Camino Community College* case is glaring.

It is as if they had never been decided. It is as though the courts were unanimously supportive of Mr. Reynolds' position.

The memorandum is also startling because it would appear to suggest that such major departures from statutory interpretation can be implemented without changing the regulations.

These new policies are at odds with longstanding regulations and it would be required under the Administrative Procedure Act that such substantive changes in the regulations be preceded by notice and an opportunity for public comment.

Mr. Reynolds does not even so much as mention that in his memorandum about these new policies. The best information that I have been able to collect says that the memorandum has not yet been elevated to the status of departmental policy.

Should it be at some point with the law under its present form, it is my view that the Department would be abandoning its duty to enforce title IX, title VI and 504.

I think that it is appropriate to look to the brief that the Government will be filing in early July in the Supreme Court in the *Grove City College* case as a litmus test for their commitment to a broad interpretation of the "program or activity" language in the civil rights statutes.

As far as I know, and I have talked with Justice Department attorneys, the brief has not yet been drafted. What position will Secretary Bell take and how will Mr. Reynolds advise him?

These are questions of great importance not only to title IX beneficiaries, but to the beneficiaries of title VI and section 504, as well.

We think that it is most important that the broad interpretation given by the third circuit in Grove City be upheld.

I am sure that my colleagues on the panel will talk about the devastating consequences if a more narrow interpretation were to be adopted.

I would like briefly to comment on some of the enforcement problems——

Mr. Edwards. I will have to halt the proceedings for a few minutes at this point because we have a vote. We will recess for about 5 or 6 minutes.

[Recess.]

Mr. EDWARDS. The vote being taken, Ms. Kohn, you may continue. The subcommittee will come to order.

Ms. KOHN. Thank you. The Department of Education's reluctance to vigorously defend title IX and its enforcement authority in the courts is mirrored in the practical day-to-day investigative and enforcement work of the agency.

For many citizens, the only hope of redress for the discrimination they suffer is action from the Department of Education. As you know, and as Mr. Lichtman, a colleague on the panel, will discuss in more detail, the Department of Education is under court order in the *WEAL* and *Adams* cases, and has been since 1977.

I think that it is useful to note that Judge Pratt, in his decision to continue the order in somewhat modified fashion this March, expressed his concern about the Department of Education's enforcement commitment.

He said, and I quote:

> If the Government is left to its own devices, the manpower that would normally be devoted to this type of thing might be shunted off into other directions, will fade away, and the substance of the compliance will eventually go out the window.

In that case, of course, the Government has had no difficulty in making a decision to appeal, in contrast to its choice with respect to the *Richmond* decision.

I would like to focus on one particular fact, and that is that OCR engages in what I consider to be wholesale conciliation. It brags that over 90 percent of complaints are resolved.

But the discrimination often is still there, and I question whether it has really been eliminated. OCR settles very large numbers of cases on extremely good terms for the recipient, requiring that only some, but not all, of the discriminatory practices be eliminated.

The corrective action need not be, and in most instances has not been taken, when OCR issues its finding of compliance. The compliance is based on the recipient's promise to implement a corrective action plan.

Two problems exist. First, many plans are too lenient, allowing discrimination to continue, and second, OCR does not perform adequate monitoring of the implementation efforts by the recipient, and so many recipients never actually implement the plan.

But OCR does nothing about that. Two examples with intercollegiate athletics illustrate these practices well. Widespread violations were identified at Western Michigan University and a corrective action plan was developed by the university in response to OCR's findings.

Not only was the plan inadequate, it is not being implemented as promised. We prepared an analysis of the agency's findings and conclusions, which were sent to Assistant Secretary Singleton on January 21 of this year by the National Coalition for Women and Girls in Education.

We have yet to receive a response. Our contacts at the university report that numerous provisions of the plan have not been implemented, and they see no visible sign of OCR's monitoring.

Similarly, at the University of Nevada at Reno, massive violations were conciliated with the corrective action plan that found, for example, violations in access to coaching, but required no corrective action whatsoever.

When this was brought to the attention of Education's Deputy Assistant Secretary for Civil Rights, Joan Standlee, in March 1982, she promised that something would be done. To date there has been no further written demands for corrective action made on the university, although we know OCR has learned, as have we, that the men's athletic program at Reno was enhanced at the expense of the women's program after OCR had issued its letter of finding and found the institution incompliant.

Over a year after our meeting with Ms. Standlee, no action to terminate funds has been taken. Perhaps they would be more responsive if there were inquiries from your subcommittee.

We would certainly be delighted if you would inquire about these two cases.

Finally, it is disheartening to hear that the valuable time and energy of OCR's staff will be drained away from compliance work and squandered on security clearance details.

OCR employees have not been subjected to clearances in the past and we cannot envision a good reason for this undertaking now. If it actually carried out, it will waste valuable agency resources and impair staff morale.

The effort to conduct these security clearances for civil rights investigators and administrators should be abandoned.

In conclusion, I must say that at times like this I am very thankful that the Nation's founders were farsighted enough to design a system that gave us three branches and a system of checks and balances because as the agencies that have been given responsibility for enforcing title IX and the other civil rights laws are abandoning their responsibilities, the beneficiaries of these statutes will need to look more and more to Congress and to the courts for help, and the continued involvement of your committee in examining the actions of these departments is critical.

Thank you.

Mr. Edwards. Thank you, Ms. Kohn, for very helpful testimony, and staff is instructed to write the letters that you suggest.

Our next witness, a part of the panel, is Mr. Elliott C. Lichtman, attorney at law, here in Washington, D.C. Mr. Lichtman.

STATEMENT OF ELLIOTT C. LICHTMAN, ATTORNEY AT LAW, RAUH, SILARD & LICHTMAN, WASHINGTON, D.C.

Mr. Lichtman. Chairman Edwards, Congressman Sensenbrenner, I am an attorney with a Washington firm which acts as cooperating attorneys for the NAACP Legal Defense Fund in a case called *Adams* v. *Bell.* It was first called *Adams* v. *Richardson* back in 1970.

It has been Adams versus every other Secretary of HEW and Secretary of Education ever since. For 13 years, we have been trying to secure enforcement of title VI of the Civil Rights Act of 1964.

I would like to say a few words today about the higher education area, which is a major part of this litigation.

Throughout these many years, the Office for Civil Rights of first HEW, then the Department of Education, has failed to achieve the desegregation of our States' systems of higher education.

That has been true despite the issuance over the last decade of three major orders by Judge Pratt, often affirmed by the U.S. Court of Appeals here. Judge Pratt is of the District Court for the District of Columbia.

Despite those three major orders, and the last one was only 2 months ago, desegregation of our higher education system statewide in the southern and border States is nowhere in sight.

In my opinion, the principal cause of this continuing tragic violation of the rights of minority students is the unwillingness, the traditional unwillingness and the current unwillingness, of the Office for Civil Rights to utilize the enforcement mechanism mandated by title VI.

As you know, the statute, indeed, the Constitution, essentially proscribes the continuing subsidization of segregation and discrimination by recipients of Federal funds and makes clear that when the agency finds discrimination and seeks compliance voluntarily for a reasonable period of time and fails to achieve that compliance, it has no choice but to commence enforcement proceedings.

Over the years, the Office for Civil Rights has simply been unwilling to do so. The States have been keenly aware of this failure of will, and as a result, OCR's many entreaties and exhortations to the recipients of funds to come into compliance has generally proven to be ineffective.

Let me briefly in the few moments that I have this morning recapitulate just the highlights of the enforcement efforts over 13 or 14 years by OCR against the State systems of higher education.

As early as 1969 and 1970, letters went to 10 southern and border States finding that they had not eliminated the vestiges of their former dual systems. Desegregation plans were requested.

Five States simply refused to submit a plan at all. Five others submitted totally inadequate plans. HEW really did nothing.

We went to court. Judge Pratt, and as I say, affirmed by the U.S. Court of Appeals, en banc, unanimously, I would add, in 1973 held that the agency had discretion, but it didn't have discretion to subsidize the segregation indefinitely.

Once it found discrimination, once it made some efforts to get compliance voluntarily, where it failed to achieve that compliance, it had no choice under the statute but to commence enforcement proceedings and it directed the commencement of those enforcement proceedings within a finite period of time.

That produced some results. In 1974, we had for the first time plans submitted by most of these States, and HEW accepted all of the plans that were submitted to it.

In one or two cases, the States were referred to the Department of Justice where they wholly failed to submit any plan whatever.

Those plans, however, 1974, proved to be wholly ineffective. We went back to court in 1975, following discovery in a hearing, again, before Judge Pratt in early 1977, the Judge agreed that the plans had been ineffective, that desegregation had not occurred, and that further relief was necessary.

What he ordered was: First, that HEW should revoke its approval of those plans; second, that it should supply what was missing at that point, which was a series of criteria which would set forth in no uncertain terms precisely what the desegregation of higher education encompasses.

At that time there was some lack of clarity given the limited experience in higher education of exactly what higher education desegregation in statewide terms meant.

So what HEW did following the court's order in 1977 was to promulgate a series of criteria setting forth in no uncertain terms what the terms of an acceptable plan would be.

Then it began the process of negotiating with each of these States new plans in light of those criteria. Indeed, in 1978, with the pressure of the court behind it, HEW managed to secure from some five or six States at that point plans which conformed to those criteria.

These plans had their failings, but by and large, they conformed to those criteria. Those plans promised to do the job in 5 years.

Between 1978 and this year, the 1982-83 year, there were solemn commitments by each of these States to fully do the job within 5 years.

Well, it became, unfortunately, clear after a few years when we began to look at the data, that again the States were failing to keep their commitments, were failing to honor the goals and the particular measures that they had promised under these plans.

So we went back to court still a third time. We went back to court last fall. We did some discovery and Judge Pratt found just recently that each of these States have defaulted in major respects—that is his terminology—in major respects on the solemn commitments that they had made back in 1978.

Remember, this is the third chance. This is not the first chance.

We read in the newspapers that the States are now being pressured to move quickly, but one should not forget that this process began in 1969. The court has ordered three separate times that there be compliance.

Well, basically what Judge Pratt found was that they were out of compliance, that some tough measures were needed, that enforcement proceedings would be necessary in the absence of substantial steps by these States.

I could give examples of backsliding by the States, but it is really not the point because we are really going forward on OCR's own findings and Judge Pratt's own findings. The judge here has not stepped in and made findings.

He has essentially required enforcement based on the agency's, the Government's, own findings. The Government itself has found that in many major respects, these States have failed to keep their commitments and they have not achieved the desegregation which they promised by the current school year.

As a result, what we have from Judge Pratt's order is a series of enforcement proceeding deadlines. That is, if the States don't come up with new measures about this time that will work, they promise realistically to work, there will have to be enforcement proceedings in the fall.

If the States fail to make substantial progress in the next school year, there will have to be enforcement proceedings next year.

I think the basic problem has been—and we have had the assistance of the court, but that hasn't been enough—the basic problem has been that OCR is viewed as a paper tiger. It makes findings over and over that these States have not done the job.

It writes letters. It holds meetings, endless exhortations and entreaties to these recipients of funds to do the job, to keep their promises, and over and over they fail to do so.

The reason is that, as I said, OCR is viewed as a paper tiger. The States know that they can disregard the exhortations of this Federal agency with impunity, despite the mandate of the statute that requires enforcement proceedings in the absence of compliance. After all these years of negotiation, OCR utterly refuses to begin these enforcement proceedings.

Now, no one wants the cutoff of Federal funds which is the ultimate last step if these enforcement proceedings go forward. Indeed, one could expect that if these enforcement proceedings were only filed and initiated and processed, that that would never happen.

We can look at the history back in the 1960's. Between the passage of the Civil Rights Act in 1964 and early 1970, there were some 600 administrative proceedings brought by the OCR's of that day, and in almost every case, all but 4, Federal funds were not cut off. It became unnecessary to cut off the funds or in those cases where they were cut off. They were restored promptly because in each instance with just a few exceptions, the recipients came promptly into compliance.

So, the instrument of title VI has worked in the past. The problem is that since 1970, the administrations that have implemented title VI have been unwilling to use the enforcement mechanism which is mandated by the statute.

Here the court has over and over required that the enforcement proceeding be used where appropriate, and hopefully it will happen this time, but I would urge these subcommittees to assist the court because the court orders in the past have not been sufficient.

I would think that since it is now almost 20 years since the enactment of title VI in 1964, since it is almost 30 years since the *Brown* decision in 1954, further delays are intolerable, particularly the further delays in ending segregation. Further continuation of subsidization of segregation by Federal money is intolerable.

The time is here for rigorous oversight by the subcommittees as to OCR's implementation of title VI, and I would urge these subcommittees to take whatever steps are necessary and appropriate to insure that this important law is fully carried out.

Mr. EDWARDS. Thank you very much, Mr. Lichtman.

[The prepared statement of Elliott C. Lichtman follows:]

STATEMENT OF ELLIOTT C. LICHTMAN, ATTORNEY AT LAW, RAUH, SILARD & LICHTMAN, WASHINGTON, D.C.

Chairman Simon, Chairman Edwards and Members of the Subcommittees:

I am Elliott C. Lichtman, an attorney representing the plaintiffs in Adams v. Bell, a law suit which has sought for 13 years to achieve enforcement of Title VI of the Civil Rights Act of 1964 with respect to state systems of higher education. Throughout these years, the Office for Civil Rights of the Department of HEW, and later of the Department of Education, has failed to achieve the desegregation of our state systems of higher education. Despite the issuance over the last decade of three separate major orders by the Adams Court--the most recent less than two months ago--the desegregation of many of our state systems of higher education remains nowhere in sight.

In my opinion, the principal cause of this continuing tragic violation of the rights of minority students has been the unwillingness of OCR to utilize the enforcement mechanism mandated by Title VI. That statute, and indeed the Constitution itself, proscribe the federal subsidization of racial segregation and discrimination. Title VI makes clear that where a federal agency has found discrimination, and cannot secure compliance voluntarily, it must initiate an enforcement proceeding. Over the years the Office or Civil Rights has been unwilling to do so. The states have been keenly aware of this failure of will, and as a result, OCR's entreaties and exhortations for compliance have generally proven to be ineffective.

Let me recapitulate briefly the sad history of OCR's enforcement efforts over the last 13 or 14 years. As early as 1969 and 1970 HEW sent letters to ten southern and border states finding that they had failed to eliminate the vestiges of former segregation by law in their higher education systems, for those systems remained racially separate in their student bodies and faculties. Those letters required each of the states to submit a desegregation plan within 120 days. Although five of the states submitted inadequate plans and five others submitted no plan at all, HEW failed to take any enforcement action while continuing to advance federal funds to each of the states. As a result, in 1973 the Federal District Court in the Adams case directed enforcement proceedings within 120 days against any state which refused to submit a plan in conformity with Title VI. That ruling was appealed to the United States Court of Appeals for the District of Columbia which, sitting en banc, unanimously affirmed the District Court's Order in all material respects.

By 1974 all but two states had submitted desegregation plans to HEW which the agency approved. The two which refused, Louisiana and Mississippi, were referred to the Department of Justice for civil suits.

When no real desegregation was achieved under the HEW-approved plans, the plaintiffs in Adams returned to court for further relief. The District Court agreed that no progress had occurred and required HEW to revoke its approvals of those plans. Equally importantly, in its 1977 Order, the Court required HEW to publish criteria setting forth in clear terms the general desegregation requirements which would constitute the conditions for the acceptance of new plans from the states. Those HEW criteria were promulgated in July 1977, and new plans were approved by most of the states in 1978, promising full desegregation within a five year period ending in 1982-83. Although the 1978 plans were not all that they should have been, the plans did commit the states to the achievement of important desegregation goals by the current school year.

Unfortunately, as Judge Pratt found in his recent Order issued March 24, 1983, each of the states has defaulted "in major respects on its plan commitments and on the desegregation requirements of the Criteria and Title VI." Indeed, in some instances the states have actually gone backwards in their efforts to desegregate. Let me give you two examples.

With respect to the State of Arkansas, OCR in a letter to the state in January of this year found that black students, faculty and administrators remain concentrated at the formerly black institutions while white students, faculty and administrators remain concentrated at the formerly white institutions; that there remain significant disparities in the rates at which black and white high school graduates enter the state-wide college system; that the gap in the dropout or retention rates of black and white students has continued; and finally that the disparity in black-white entry rates to graduate and professional schools has worsened over the last five years when under the plan it was supposed to be eliminated. As OCR found in its letter to the State, the failure to achieve the goals of the State's plan has been due, in some instances "to lack of vigorous and complete plan implementation," and in others, because "the plan did not contain sufficient measures to achieve the goals."

Similarly, in the case of Georgia, OCR in January 1983 found that black students and academic personnel remain concentrated at the formerly black institutions while white students and white academic personnel remain concentrated at the formerly white institutions; and that the disparity in black and white entry rates into colleges actually has increased since 1978-79--an enormous 18.8% gap when the State had agreed to eliminate the disparity entirely.

I would emphasize that each of these conclusions, on which the Federal Court premised its most recent Order, are based on OCR's own findings and are therefore undisputed.

The cause of these dismal results is not difficult to explain. With one exception during the Carter Administration, no administrative enforcement proceeding has ever been commenced against a state system of higher education. Finding over and over that the states have failed to keep their commitments (or have failed to make the commitments at all), OCR has transmitted countless entreaties and exhortations to the states to come into compliance with the law. But OCR is viewed as a "paper tiger." The states know that they can disregard the entreaties of the federal agency because despite the mandate of the statute, OCR will not employ the required enforcement mechanism. No one wants federal funds to be cut off, but the statutory and constitutional rights of minority students will continue to be violated as long as violations may occur with impunity.

When OCR has been willing to commence enforcement proceedings, they have been highly effective for inducing compliance. For example, between the passage of the Act in 1964 and March 1970, HEW began approximately 600 administrative proceedings against noncomplying school districts. For all but four of these districts, federal assistance was continued or restored after the district agreed to a desegregation plan. In short, the noticing of administrative hearings has almost invariably resulted in compliance.

But over the last decade OCR has made it crystal clear that it will no longer commence such proceedings. The result has been the expected one of massive noncompliance with Title VI.

Perhaps Judge Pratt's Order of March 24, 1983 will change matters. The Judge has set some strict deadlines for OCR. He has directed OCR to commence formal Title VI enforcement proceedings by September of this year against any of six states which fails to submit a plan containing "concrete and specific measures reasonably ensuring achievement of the state's goals and commitments contained in its 1978 plan no later than the fall of 1985." And if a state fails to make "substantial progress" on its plan during the 1983-84 academic year, the Court has ordered enforcement proceedings no later than the fall of 1984. In another part of the Order, enforcement deadlines have also been set with respect to three other states which have failed for years to submit adequate plans to OCR.

Title VI is a statute which has been very effective in the past. It can be effective again if OCR will manifest to the states that enforcement proceedings will be initiated when necessary. Almost 20 years since the enactment of Title VI (and almost 30 years since Brown), further delays in the desegregation of state institutions of higher education and continuing federal subsidies of segregation are intolerable. I appeal to these Subcommittees to exercise the most rigorous oversight of OCR's implementation of Title VI and to take the steps necessary to ensure that this important law is fully carried out.

Mr. **Edwards**. Our next witness will be Judge Reese Robrahn. Good morning, Your Honor. Good to have you here.

STATEMENT OF JUDGE REESE ROBRAHN (RETIRED)

Judge **Robrahn**. Thank you very much for this opportunity to appear. I am the former director of governmental affairs of the American Council of the Blind and the executive director of the American Coalition of Citizens With Disabilities.

I am a lawyer and a former judge in the State court system in Kansas, but I appear this morning as a private, disabled citizen, one who has spent all of my adult life either as a volunteer or as a paid staff person to secure meaningful programs in civil rights for disabled people so that we can have equal opportunity to participate in the activities of our communities to the extent of our individual abilities.

By the time of the enforcement of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in federally assisted programs, institutions of higher education and the education community had already established a negative track record in compliance with title VI of the Civil Rights Act of 1964, in title IX of the Education Amendments of 1972 prohibiting discrimination on the basis of race and sex.

It was no surprise then that institutions of higher education and the education community were perhaps the most outspoken group opposing adoption of the section 504 regulations during the drafting and adoption procedures and at oversight hearings conducted thereafter.

Their major complaint was the great cost of modifying buildings and facilities so that they would be accessible to and usable by handicapped students.

Excessive cost estimates were sometimes contrived but more often they were arrived at through little or no understanding of what the regulations required and of what was necessary to meet the needs of handicapped students.

Examples: A lawyer representing a major university stated that an examination by engineers and architects of the campus revealed that it would cost approximately $500,000 to replace hardware on campus doors with braille markings for blind students so that they would know what was on the other side of the doors.

As a matter of fact, braille numerals and other raised identifying letters would cost $1 to $2 per door.

The representative of a small college testified that it would cost approximately $1.5 million to bring its campus into compliance with the regulations. Yet a disabled design engineer testified at the same hearings that a college with similar facilities served by him would cost less than $100,000, including a small elevator.

There was a failure to recognize that what was required by the regulations is program accessibility and not total accessibility of every building and facility.

Subsequent to the effective date of the regulations in June of 1977, recipients of Federal financial assistance, including colleges and universities, failed to comply with requirements of the regulations for the utilization of the handicapped individuals in the development of a transition plan and of a self-evaluation procedure to eliminate policies and practices found to be discriminatory.

Thus, discriminatory situations in policies and practices were unknowingly overlooked and expensive, unnecessary modifications were undertaken.

There has resulted an inordinately high percentage, about 25 percent, of section 504 complaints relating to accessibility issues.

During the last year, enforcement of section 504 has become virtually nil. Funds and personnel for compliance reviews and enforcement have been drastically curtailed.

Programs of technical assistance on section 504 have been discontinued. Funds earmarked by the Congress for the training of departmental personnel on section 504 have been turned back to the general fund of the Treasury.

Directives have been issued by the Department of Education calling a halt to the issuance of letters of finding in certain kinds of complaints.

The Department of Justice and Office of Management and Budget have engaged in a 2-year rewriting exercise of coordination guidelines on section 504.

Only recently, this was terminated with a decision to let the existing guidelines stand. The Department of Justice in some court cases has abandoned former positions of compliance and enforcement policy, and in other cases it has failed to appeal decisions of lower courts which do not follow the general rulings of the courts or which represent patent departures from longstanding policies and practices in civil rights enforcement.

These actions and inactions have served as more than just smoke signals to the recipients of Federal financial assistance that there is little likelihood that they will be held responsible for failure to comply with civil rights laws.

With respect to section 504 more recently, the Department of Justice circulated to all Federal agencies prototype regulations for the internal programs and activities of the agencies which contain many of the objectionable provisions of the draft guidelines relating to recipient programs.

The decision to let stand the existing section 504 guidelines relating to recipient programs notwithstanding the prototype regulations for the agencies themselves sends a signal loud and clear to the recipients that they will not be held to a greater degree of compliance than the agencies themselves.

Two cases have reached the U.S. Supreme Court in which the court ruled on substantive issues in section 504, *Davis* v. *Southeastern Community College and Rawley* v. *Board of Education.*

The former case dealt with the issue of postsecondary education and the latter with elementary school education. In these cases, the court ignored express statements found repeatedly in the legislative history of section 504 that it is intended to require the provision of equal opportunity for handicapped individuals.

While the rulings in each of these cases logically can be read as turning on the particular facts and circumstances involved in each case, recipients of Federal financial assistance, department heads, the Department of Justice in some courts, extrapolate and theorize from the rulings in these cases to provide legal basis for whatever result they desire.

This illogic has resulted in a finding by the Merit System Protection Board that while the work product and performance of a disabled Department of Education lawyer is satisfactory, nonetheless, by reason of the ruling in the *Davis* case, that employee may be discharged because he is not a "qualified handicapped person."

In conclusion, I commend the efforts of these two committees for their conduct of these hearings, and urge the Congress to conduct similar hearings on all aspects of the enforcement of civil rights laws in order to focus public attention on the lack of enforcement and to express, once again, the specific intent of Congress.

As a democratic nation, we can't afford to have the progress of almost two decades destroyed. If those responsible for civil rights laws enforcement persist in actions to undermine these laws, then this Congress should take action to express its intent through specific legislative enactment.

Thank you once again for this opportunity to testify.

Mr. EDWARDS. Thank you very much, Judge.

Our next witness is Antonia Hernandez, who is counsel to the Mexican American Legal Defense and Education Fund.

STATEMENT OF ANTONIA HERNANDEZ, COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, WASHINGTON, D.C.

Ms. HERNANDEZ. Good morning. I thank the distinguished members here today for allowing me to testify on behalf of the Mexican American Legal Defense Fund. My name is Antonia Hernandez, and I am the counsel for the D.C. office.

MALDEF's commitment to higher education is long standing. My testimony designates the many cases that we have been involved in and the many studies that we have conducted and which has brought MALDEF in the forefront of civil rights for Hispanics in higher education.

In the past MALDEF has been able to rely on the Federal Government to insure some degree of uniformity, support, and progress in the enforcement of antidiscrimination procedures in higher education.

It is disheartening to say that the current Federal Government's commitment to equality of access and quality education for Hispanics in higher education is no longer a priority of this administration.

Instead, MALDEF has been forced to use scarce resources to monitor the Federal Government's actions and to insist in some instances through the courts that it enforce antidiscrimination policies in higher education.

Today I will address several instances which exemplify the dismal status of Hispanics throughout the higher educational system and the failure of the Department of Education and the Department of Justice to take the required initiatives to alleviate this injustice.

The *Adams* v. *Bell* case has been in litigation for approximately 14 years. Originally, the litigation did not encompass the concerns of Hispanics.

It was not until 1976 that MALDEF sought to intervene on behalf of Hispanic students living in Texas. The reason for MALDEF's intervention was simple. The Federal Government failed to investigate civil rights violations against Hispanics while reviewing the Texas education system.

In 1976, we became involved in order to insure the protection of non- and limited-English speaking children as set forth in *Lau* v. *Nichols*.

After some foot dragging, we were able to get some compliance from the Department of Education and there was compliance with title VI.

In 1978, the Department of Education undertook a review of Texas' attempts to comply with title VI and found segregation of black and white colleges. However, Texas had only focused on black concerns without any consideration of violations against Hispanics and national origin groups.

Thus, many of the civil rights violations against Hispanics and the effect of noncompliance with title VI on the Hispanics were not taken into consideration.

It was not until we and other Hispanic and civil rights groups pushed for further and more extensive review that the Hispanic concerns were finally investigated. The Texas plan was resubmitted and was provisionally enacted in 1981. Texas was given 6 months to comply with title VI.

Unfortunately, the June 1981 deadline was not met. The present Department of Education and the Department of Justice not only ignored the 6-month mandate, but in the fall of 1982 filed a motion to dismiss the *Adams* v. *Bell* case.

As one of the several States which had not submitted its desegregation plan, Texas finally submitted its plan in May 1982. The Department of Education initially accepted the plan.

Upon further review of the plan by the plaintiffs, the plans were found inadequate.

The plaintiff's objections and comments were submitted to the Department of Education and requested that the plans be rejected. In spite of the valid objections by the plaintiffs, the Department of Education insisted on accepting those inadequate plans.

The plaintiffs were then forced to seek court intervention. As a consequence of several court hearings, Judge Pratt found that each of the States had major defaults in their plan commitments and desegregation requirements under the plan.

As a result, the Department of Education and the breaching States were ordered by the court to immediately comply and the court also set strict deadlines to be met.

As a consequence, the Department of Education ordered several States, including Texas, to submit plans by May of this year. Texas has finally submitted its plan. However, it is still inadequate and does not desegregate the Texas postsecondary education.

Once again, MALDEF has been forced to object to the May 1983 plan. The latest plan submitted is not in conformity with the revised criteria specified in the "Ingredients of Acceptable Plans to

Desegregate State Systems of Public Higher Education" issued on February 15, 1978, by the Department of Education.

The reasons for our opposition and our objections included: one, the failure to provide detailed description of the resources expressed in dollars which will fund any effort set out in the plan; two, no statewide plan for coordination, monitoring, or enforcement of the plan; three, no plan for increasing minority student access into graduate or professional programs; four, no plan for increasing minority hiring; five, no plan for compensatory education instruction, counseling, or financial aid programs aimed to increase minority student access; six, a failure to upgrade institutions where large concentrations of Hispanic students are enrolled; seven, the lack of sequential goals and timetables for Mexican American students that will remedy existing violations by 1990; and the lack of any plan to achieve a unitary integrated system of higher education at all levels by 1990 that would eliminate past title VI violations.

In my testimony I fully delineate more the reasons for our objections.

Another example of the Department of Education's failure to enforce antidiscrimination laws is in the California community college system. Although there was progress in the Hispanic access to higher education in the late sixties and early seventies, the rate of growth in enrollment has leveled off and is now beginning to show signs of actually decline.

Where enrollment has increased for Hispanics, a closer examination reveals that this is due to a concentration of enrollment in 2-year colleges. In fact, Hispanics are more concentrated in 2-year institutions than any other minority student and far more than the majority of white students.

For example, in Arizona and California, two of the States enrolling most Hispanics, over 70 percent of Hispanic freshmen and sophomores are enrolled in 2-year colleges. This overrepresentation of Hispanics is particularly disturbing since few Hispanics enrolled in 2-year colleges ever transfer over into 4-year universities.

Not only is the high concentration of Hispanics on community colleges alarming, there still exists discriminatory practices within these community colleges which prevent Hispanics from fully utilizing these institutions.

For example, some community colleges engage in contracts with labor unions and offer vocational education apprenticeship classes. Yet, in California few women and minorities were allowed to enroll in these classes.

The colleges would allow the labor unions to screen the students and would usually enroll only those students recommended by the unions.

In fact, it was estimated that approximately 73 percent of the students in these apprenticeship classes were white males. It was not until MALDEF submitted an administrative complaint on April 14, 1981, that the Office for Civil Rights for the Department of Education attempted to correct the situation in California.

This is true despite the fact that the Office for Civil Rights knew or should have known of this violation since 1979.

Additionally, although there appears to be a parallel pattern in Texas and Arizona, the Office for Civil Rights has not taken the initiative to investigate the problem. The pattern that the Office of Civil Rights appears to be following is that unless an organization such as MALDEF forces the Office for Civil Rights to take action against discriminatory practices in higher education, it will not initiate any action to alleviate such discrimination.

Therefore, it is clearly breaching its duty to insure nondiscriminatory practices in higher education. Unfortunately, due to this apathy and lack of enforcement, it is always the minority groups, such as the Hispanics, who suffer.

I also delineate other instances in my testimony.

But, in conclusion, what I would like to request of the committees is closer oversight of the Department of Justice and the Department of Education in insuring that the enforcement of our civil rights are fully taken into consideration.

We believe that the present laws are sufficient to eliminate or curtail discrimination and the problem has been a failure to enforce these laws.

Thank you.

[The prepared statement of Antonia Hernandez follows:]

Prepared Statement of Antonia Hernandez, Associate Counsel, Mexican American Legal Defense and Educational Fund

Good morning. I thank the Honorable Chairmen Edwards and Simons and the distinguished members here today for allowing me to testify on behalf of the Mexican American Legal Defense and Educational Fund (MALDEF). My name is Antonia Hernandez, the Associate Counsel for the Washington D. C. office. MALDEF is a national legal and educational organization devoted to protecting the civil rights of close to fifteen (15) million Mexican Americans and other Hispanic Americans. Currently, we have offices in San Francisco, Los Angeles, Sacramento, Denver, San Antonio, Chicago and here in Washington, D.C. Some of our primary areas of involvement include education, immigration, employment and voting rights. Thus, we are keenly aware of the current problems of civil rights enforcement by the Department of Education and the Department of Justice. I will address the current lack of enforcment and the lack of initiative that these Departments have extended towards the protection of Hispanic civil rights.

MALDEF's commitment to higher education is longstanding. Our involvement over the years with key cases such as Bakke, 438 U.S. 265, State of New Mexico ex rel., Melendez v. Burciaga, Sup. Ct. of N.M, No. 12499, Garcia v. Hayward, U.S.D.C., E.D. Calif., No. S-80-274 MLS, 1981, Adams v. Bell, No. 3095-70, Grove City College v. Bell, 687 F.2d 684 (3rd Cir. 1982) cert granted 103 S. ct. 1181 (1983) as well as studies such as the MALDEF-Ford Foundation Higher Education Project initiated in 1979, has brought MALDEF to the forefront of civil rights litigation for Hispanics in higher education.

In the past, MALDFEF has been able to rely on the federal government to insure some degree of uniformity, support and progress in the enforcement of anti-discriminatory procedures in higher education. It is disheartening to say that the current federal government's commitment to equality of access and quality education for Hispanics in higher education is no longer a priority of this Administration. Instead, MALDEF has been forced to use scarce resources to monitor the Federal government's actions and to insist, in some instances through the courts, that it enforce anti-discrimination policies in higher education.

Our goal in this area and I would like to emphasize that this goal should also be that of the Department of Education and the Department of Justice, is to create a more equitable distribution of Hispanics throughout all segments of higher education and our society. There exists a false perception that Hispanic enrollments in institutions of higher learning has greatly increased. Unfortunately this is not the case.

> From 1970 to 1980, Hispanic full-time undergraduate students increased from only 2.1 percent to 3.7 percent of total college enrollment. Hispanic college enrollment as a percent of Hispanic high school graduates declined from 35.4 percent to 29.9 percent from 1975-80, and Hispanic college enrollment as a percent of the 18 to 24 year old Hispanic population fell from 20.4 percent in 1976 to 16.1 percent in the year 1980.

Rafael J. Magallan, "Insights Into the Needs of a New Source of Students," Case Currents, Vol. IX, Number 4, April 1983.

In addition, Michael Olivas, Director of the University of Houston's Institute for Higher Education Law and Government best summarizes the Hispanic situtation: "Although there is a public perception that Hispanic enrollments have greatly increased in recent years, the reality is very different, for Hispanic students have neither attained access into a broad range of institutions nor dramatically increased their numbers throughout the system.

A National Problem

The proper education of Hispanics and the national need to maintain an equitable distribution of Hispanics throughout all segments of higher education are and must continue to be bipartisan concerns. The most recent report by the Commission on Education, A National at Risk, illustrates the severe problems this nation is experiencing in all areas of education. However, the Hispanic experience is much worse since they do not even have access to the American education system. That is, statistics on Hispanic education lie well below the national average which is itself an embarrassment to this great nation. Although A Nation At Risk emphasizes elementary and secondary schools, it also addresses the needs of disadvantaged students throughout this nation's education system, including higher education. Moreover, the Policy Conference on Postsecondary Programs for the Disadvantaged[1] also noted that the education of minority students in higher education was of "very high priority", "of high national need" and "a problem of national concern".[2]

> Graduate and professional education of the disadvantaged and minorities is a very high priority because of past neglect and present severe underrepresentation. We call for strengthened state and federal efforts that insure more blacks, Hispanics, and Native Americans complete advanced degrees, including Ph.D's in the arts and humanties, computer sciences, education, engineering, life sciences and MD's. Low productivity in many of these fields is a problem of national concern.[3]

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[1] This conference was sponsored by a grant from the Fund for the Improvement of Postsecondary Education to the New York State Board of Regents, with the cooperation of the Johnson Foundation. Wingspread, Rancine, Wisconsin, June 1982).

[2] Id at 7.

[3] Id

Today, I will address several instances which exemplify the dismal status of Hispanics throughout the higher education system and the failure of the Department of Education and the Department of Justice to take the required initiative to alleviate this injustice.

Adams v. Bell

The Adams v. Bell case[4] has been in litigation for approximately fourteen years. Originally this litigation did not encompass the concerns of Hispanics. It was not until 1976 that MALDEF sought to intervene on behalf of Hispanic students living in Texas. The reason for MALDEF's intervention was simple: The Federal government failed to investigate civil rights violations against Hispanics while reviewing the Texas education system.

A brief history is required here to appreciate the inexcusable and deliberate violation by the cited states, the procrastination of the Department of Education and the perpetuation of institutions which violate civil rights. In 1969, HEW (Health, Education and Welfare) found ten (10) southern states had failed to eliminate segregated higher eductional systems. These systems remained racially separate in their student bodies and faculties. Letters were sent to these states requiring each to submit a desegregation plan within one hundred twenty (120) days. Five(5) states submitted inadequate plans while the other five (5) failed to submit any plans at all. Without regard to their duty to enforce and protect against such civil rights violations, HEW failed to execute any enforcement action. In addition, notwithstanding the violation, HEW continued to provide federal funds to each breaching state and thus aided and fostered the discriminatory systems with federal moneys. In 1970, the Legal Defense Fund filed a motion to compel the Federal government to enforce Title VI against these states. As a result, in 1973 the Federal District Court directed enforcement proceedings within one hundred twenty (120) days against any state which refused to submit a conforming desegregation plan. The ruling was appealed but the United States Court of Appeals for the District of Columbia affirmed the District Court's order.

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[4] No. 81-1715 (D.C. Cir., 1981).

In 1976, MALDEF became involved in order to insure the protection of Non-and Limited-English speaking children as set forth in Lau v. Nichols.[5] In 1977, the court ordered HEW to publish criteria setting forth the general desegregation requirements. In 1978, the Department of Education undertook a review of Texas' attempts to comply with Title VI and found segregation of black and white colleges. However, Texas had only focused on black concerns without any considerations of violations against Hispanics and national origin groups. Thus, many of the civil rights violations against Hispanics and the effect of noncompliance with Title VI on the Hispanics were not taken into consideration. It was not until MALDEF and other Hispanic and civil rights groups pushed for further and more extensive review that the Hispanic concerns were finally investigated.[6] The Texas plan was resubmitted and was provisionally accepted in 1981. Texas was given six(6) months to comply with Title VI.

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[5] Lau v. Nichols, No. 414 U.S.563 (1974).

[6] HEW found that Hispanics suffered the same type of discrimination and expanded its coverage.

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Unfortunately, the June 1981 deadline was not met. The present Department of Education and the Department of Justice not only ignored the six month mandate but in the fall of 1982 filed a Motion to Dismiss the Adams v. Bell case.

Thus, the Adams v. Bell case illustrates this Administration's disregard for previous commitments made by the Department of Education and the Department of Justice and a callous defiance of congressional and judicial mandates. After 14 years of noncompliance, it is evident that more stringent oversight of the Department of Education's Office of Civil Rights and the Department of Justice in regard to similar civil rights cases is needed.

Texas Plan

As one of the several states which had not submitted its desegreation plan, Texas finally submitted its plan on May 6, 1982. DOE initially accepted the plans. Upon further review of the plans by the plaintiffs, the plans were found inadequate. The plaintiff's objections and comments were submitted to DOE and requested that the plans be rejected. Inspite of the valid objections by the plaintiffs, the DOE insisted on accepting those inaequate plans. The plaintiffs were then forced to seek court intervention. As a consequence of several court hearings, Judge Pratt found that each of the states had major defaults in their plan commitments and desegregation requirements under the Title VI. As a result, DOE and the breaching states were ordered by the Court to immediately comply and the Court also set strict deadlines to be met. As a consequence, DOE ordered several states, including Texas, to submit plans by May of 1983. Texas finally submitted its plan, however, it is still inadequate and does not desegregate the Texas post-secondary institutions.

Once again, MALDEF objects to the May 1983 plan. The latest plan submitted is not in conformity with the revised criteria specified in the "Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education" issued on February 15, 1978 by the Department of Education.[7] The reasons for MALDEF's objections include:

1. the failure to provide detailed description of the resources, expressed in dollars, which will fund any effort set out in the plan;
2. no statewide plan for coordination, monitoring, or enforcement of the plan;
3. no plan for increasing minority student access into graduate or professional programs;
4. no plan for increasing minority hiring;
5. no plan for compensatory education instruction, counseling or financial aid programs aimed to increase minority student access;
6. a failure to upgrade institutions where large concentrations of Hispanic students are enrolled;
7. the lack of sequential goals and timetables for Mexican American students that will remedy existing violations by 1990; and
8. the lack of any plan to achieve a unitary integrated system of higher education at all levels by 1990 that will eliminate past Title VI violations.

Therefore, MALDEF is recommending to the Department of Education that the Texas plan should not be accepted and compliance proceedings should begin promptly pursuant to Judge Pratt's March 25, 1983 order.

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[7] 43 Federal Register 6658, February 15, 1978.

MALDEF's objection specified in #1 above is based on the failure to delineate how Texas will account for spending patterns which will address desegregation. The objections pronounced in No. 3,4,5,6, and 8 reflect the concerns for affirmative action goals which can be easily evaluated for compliance purposes. Objection No.7 addresses the concern for proper and efficient promotion of Mexican Americans, the major Hispanic ethnic group in Texas, throughout the Texas higher education school system. Lastly, in order to effectively coordinate and enforce the Texas plan monitoring systems and other means of data collection must be seriously executed.

The Mexican American Ethnic Group

The objection noted in No. 7 in the previous pages requires some clarification. MALDEF strives to protect all Hispanic Americans from constitutional and civil rights violations. In doing so, MALDEF is aware and sensitive to the fact that the national origin suspect class has been overlooked in desegreation plans and compliance patterns by the violating state, the Department of Education and the Department of Justice. For example, as already mentioned before, the Mexican American is by far the major Hispanic ethnic group in Texas and most of the Southwest. Yet the Texas plan as well as other desegregation plans do not provide for specific timetables for Mexican Americans. Thus, there is no assurance that adequate representation in higher education system such as Texas will occur because a very general "Hispanic" category is utilized. This is true despite the fact that there exist several cases in Texas which hold that the Mexican American constitutes a clearly separate and clearly identifiable ethnic group for purposes of determining whether there exists a dual system of education[8] The present Texas plan does not adequately address this fact nor does it adequately reflect such distinction in its timetables and desegreation plans. With this in mind, misrepresentations of Mexican Americans will continue to occur. A good example of this type of misrepresentation already exists in Texas where there are more Latin American Hispanics than there are Mexican American Hispanics in professor positions.

Data Collection

Data collection[9] is an essential tool in monitoring and enforcing civil rights complaints. This is true especially in regards to monitoring and enforcing state desegregation plans in higher education. A close account of the initial problem can be discovered and properly addressed expeditiously with the accurate collection of data.

However, it has long been a problem with the Department of Education that the data collected in the areas of higher education have not been reliable or extensive. In fact, the current Department seems to be reluctant to initiate accurate research on Hispanics in higher education. In order to properly monitor and discover violations of Hispanic civil rights, accurate and extensive data is a must. Data collection is thus an important part of measuirng compliance with affirmative action. However, the Department of Education is plagued by data problems. For example, earlier financial aid packaging studies conducted by the Department of Education have negatively effected Hispanics.[10] For example, it was not until LULAC National Educational Services Centers, an 11-city Hispanic counseling organization, conducted a financial aid study based upon IRS returns and notorized parent confidential statements that an accurate study analyzing Hispanic student financial aid awards became available. The need continues for the Department of Education to conduct more accurate studies on Hispanics. By conducting these studies, not only will a better understanding of Hispanic needs be achieved but more importantly, accurate information will help in developing wiser and more efficient remedies to alleviate problems of discrimination against Hispanics. Therefore, MALDEF recommends that the Department of Education, as a part of its duty to provide equal access to education, conduct more comprehensive studies and monitoring system for the proper data collection on Hispanics in higher education.

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[8] *Tasby* v. *Estes*, 342 F. Supp. 945 (1971) and *U.S.* v. *Texas Education Agency* (Austin I.S.D.), U.S.D.C.,W.D. Tex. No. A-70-CA-80.).

[9] *See generally,* MALDEF Complaint No. 2 to the Texas plan.

Disparity

The disparity between the percentage of the Hispanic general population and the percentage of Hispanics enrolled in higher education is discouraging. However, more appauling is the disparity between Hispanic students in secondary institutions and those in post-secondary institutions. For example, in East Los Angeles, Ca, approximately

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[10] See generally, Dr Michael A. Olivas, Testimony befdore the House Subcommitee on POstsecondary Education, Feb 4, 1982.

80 percent of the students in secondary schools are Hisapnic, however, there are only approximately 5 percent in post-secondary schools. In Texas, only 14.5 percent of Hispanic high school graduates enroll in traditionally white senior Texas colleges, while the percentage for white students is 35.7.[11] Again there must be an effort by the Department of Education to at least examine why these disparities exist. Similar studies are initiated by other departments in the government, concerning such areas as the job market disparities, with success. Therefore, the Department of Education should also study these disparities to give it more insight on the matter. In this way, more rapid enforcement and desegregation may result.

California Community Colleges

Although there was progress in the Hispanic access to higher education in the late 1960's and early 1970's, the rate of growth in enrollment has leveled off and is now beginning to show signs of actual decline. Where enrollment has increased for Hispanics, a closer examination reveals that this is due to a concentrated enrollment in two-year community colleges. In fact, Hispanics are more concentrated in two year institutions than other minority students and far more so than majority white students. For example, in Arizona and California, two of the states enrolling most Hispanics, over 70 percent of Hispanic freshmen and sophmores are enrolled in two year colleges. This overrepresentation of Hispanics is particuarly disturbing since few Hispanics enrolled in two year colleges ever matriculate onto a four year degree. Moreover, the disproportionate number of Hispanic students in two year colleges translates into very low enrollments in four year colleges and universities. For example, Hispanic enrollment in the University of California is 4.9 percent, and that of the California State University System is 8.7 percent compared to an Hispanic secondary school enrollment approaching 22 percent.

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[11] Judy Weissler, the "Plan would add 5,500 minority students to state 'white' colleges.", The Houston Chronicle, May 12, 1983.

Not only is the high concentration of Hispanics on community colleges alarming, there still exist discriminatory practices within these community colleges which prevent Hispanics from fully utilizing these institutions. For example, some community colleges engage in contracts with labor unions and offer vocational education apprenticeship classes. Yet, in California few women and minorities were allowed to enroll in these classes. The colleges would allow the labor unions to screen the students and would usually enroll only those students recommended by the unions. In fact, it was estimated that approximately 73.3 percent of the students enrolled in these apprenticeship classes were white males. It was not until MALDEF submitted an administrative complain on April 14, 1981, that the Office for Civil Rights for the Department of Education attempted to correct the situation in California. This is true despite the fact that the Office for Civil Rights knew or should have known that this policy violated Title VI, Title IX and the Vocational Education Act of 1963 because the pattern of civil rights violations was found in 1979 Office of Civil Rights Survey Forms (OS/CR 203).

Additionally, although there appears to be a parallel pattern in Texas and Arizona, the Office for Civil Rights has not taken the initiative to investigate the problem. The pattern that the Office for Civil Rights appears to be following is that unless an organization such as MALDEF forces the Office for Civil Rights to take action against discriminatory practices in higher education, it will not initiate any action to alleviate such discrimination. Therefore, it is clearly breaching its duty to insure nondiscriminatory practices in higher education. Unfortunately, due to this apathy and lack of enforcement it is always the minority groups such as the Hispanics who suffer.

The Department of Justice and Higher Education

In the past, the Department of Justice has been instrumental in support and enforcement of civil rights violations. However, this is no longer the case. MALDEF and other civil rights groups can not rely on DOJ as we once did before this administration. In fact, many times we find ourselves not only litigating to enforce compliance against violating states, but in addition, addressing actions initiated by the Justice Department to prolong abuses of civil rights or to negatively effect desegregation plans to a point of dismantling hard won progress. For example, in the twenty seven (27) months of the present Department of Justice, not one new school desegregation case has been filed. Moreover, there seems to be a willingness by the Department of Justice to reopen cases which have promoted desegregation plans.[12]

One main area of concern in higher education desegregation plans has been the Department of Justice's willingness to accept plans which foster "Separate but Equal" education. For example, in Louisiana and North Carolina, the Department settled for remedies which called for improvements in black colleges but allowed high degrees of duplication in degree programs between white and black schools to remain. Thus, DOJ failed to follow the remedial principles which addressed the duplication problem that foster "Separate but Equal" education systems noted in Geier v. University of Tennessee, 597 F.2d 1056, cert denied, 444 U.S. 886 (1979). In Geier, the court found that since the state of Tennessee, acting through its legislature, supported the segregation plan of a dual white/black education system, both schools were required to participate in the desegregation plan.

It is evident that Assistant Attorney General Reynolds in his November 19, 1981 testimony has taken views on school desegregation remedies that are diametrically opposed to the Supreme Court legal principles in Brown v. Board of Education, 349 U.S. 294 (1955), Green v. Board of New Kent County, 391 U.S. 430, (1968), Swarn v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973). In his testimony, he stated that "the Department will henceforth, on a finding by a Court of de jure segregation, seek a desegregation namely that emphasis 'Freedom of Choice' plus 'separate but equal', rather than court ordered busing."[14]

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[12] Mary Thornton, "NAACP officer asks abolition of Justice's Civil Rights Division, The Washington Post, May 7, 1983 at A-3.

[13] Hearings, Nov 19, 1981.

[14] Id.

Thus, the impact of such a position by the Department of Justice and the Department of Education has undoubtedly had a chilling effect on Hispanic civil rights in education. More importantly, the nation remains with segregated higher education systems.

Conclusion

Congress, through forceful legislation, specifically Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, has given the federal government the power and the tools to eliminate discrimination throughout this nation's post secondary institutions. Unfortunately, these laws have not and are not being fully enforced. Since the passage of these and other anti-discrimination laws, efforts to enforce them have been slow and inadequate. Yet, in the Hispanic community there was hope and a perception that, although minimal, the federal government did care and was interested in eliminating discrimination throughout the higher education system.

Since this administration took office, the situation has become worse. Efforts to enforce our civil rights laws have ceased and both the Department of Education and the Department of Justice have adopted policies which seek to limit and eliminate all preventive efforts to curtail discrimination. Moreover, the Department of Justice in collaboration with DOE have taken positions and have argued against the interests of minorities and Hispanics in cases before the Supreme Court.

The problems of discrimination and segregation for Hispanics in postsecondary institutions remain. Without a vigilent and uniform governmental enforcement and monitoring system, this problem will become worse. It manifests into an unfortunate tragedy where equal education opportunity in higher educatin is not yet a reality for Hispanics. Since higher education is one of the primary avenues to participation in the mainstream of American society, Hispanics who are denied access to higher education are being denied their rightful place in U.S. society. Almost every study on Hispanics documents that their educational and economic status falls far below their Anglo counterparts and significant barriers still exist for Hispanics seeking access to higher education.[15]

Familiar reasons for lack of Hispanic access in higher education exist. The lack of academic preparation, financial resources, and geographic proximity to certain postsecondary institutions have all been proposed reasons. However, more accurate data collection is required to make proper conclusions. In addition, institutional complacency regarding earlier successes has resulted in the reduction of concern or the slackening of efforts to alleviate the problems of civil rights violations in higher education. The impact of questions that were being raised concerning the legality of of institutional "opportunity programs" by our enforcing government agencies[16] has undoubtedly had a chilling effect on minority aspirations and has caused colleges and universities to mark time until the federal court decisions on key cases such as *Grover* and *Adams* finalize. More importantly, is the often negative attitude of enforcing these historic civil rights cases by the very federal agencies which are in charge of such enforcement.

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[15] *See generally*, Texas Equal Educational Opportunity Plan for Higher Education, sumbitted by Governor Mark White for the State of Texas, June 15, 1981, as amended through May 9, 1983 and *the MALDEF report on the Los Angeles Unified School District (LAUSD): A Comparison of School Finance and Facilities between Hispanic and Non-Hispanic Schools during Fiscal Year 1980-81.* Dr. Ruben W. Espinosa (Principal Investigator & Resarch Director, October 1982.

Thus, there is a great need to increase the number of Hispanic students admitted, retained and issued decrees from colleges, especially in four (4) year colleges, graduate schools and doctorate programs; increase the number and the retention of Hispanic faculty, administrators, and counselors throughout the higher education system; promote the enactment of procedures and mechanisms to file complaints by interested parties and potential plaintiffs; increase monitoring and enforce speedy recovery of Hispanic representation in the higher education system; promote and enforce effective and expeditious desegregation programs; promote the encouragement, funding and support of tri-ethnic committees to provide input to both the Department of Education and the respective school systems regarding developing, monitoring and enforcing desegregation plans and other timetables and systems of equitable Hispanic distribution; and promote the sensitivity to respective Hispanic ethnic groups effected by systematic segregation and discrimination to insure effective, proper and full enforcmeent of Hispanic representation. It is only in this way that the grave disparities which mark the Hispanics plight throughout our society will be eliminated in higher education.

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[16] *Supra* Fn 12.

Therefore, we urge the distinguished members of this joint subcommittee to join with MALDEF to hold the Department of Education and the Department of Justice accountable for providing wholehearted protection against civil rights violations against Hispanics and to insure the promotion of equitable representation of Hispanics in all levels of higher education in this country. We are not only a "Nation at Risk", we are a nation which has already gambled away and failed to provide equal opportunity in higher education for its Hispanic Americans. Thank you.

Mr. HARRISON [presiding]. Thank you very much. Chairman Edwards has asked me to express his regret that he is not able to be here, and ask the first question, which I am sure he would like to do to engage in a dialog.

As you have heard, the bells have gone off, and I will have to excuse myself for a few minutes. However, the counsel to both committees are with us. I will recognize Mr. Blakey first on behalf of the Subcommittee on Postsecondary Education.

Mr. BLAKEY. I was struck by your comment, Elliott. The court orders aren't working and what we need, at least, is an attempt on the part of the administrative enforcement in order to kind of right the ship and move things on.

I was wondering whether the other witnesses share that viewpoint, and if you do, any specific comments that you would like to make and then come back to Elliott at the end and see if he has anything he wants to say.

Margaret, why don't you go ahead?

Ms. KOHN. I agree that the Department of Education's enforcement has been lacking even with a court order. It is distressing that the advocacy organizations have to keep going back to court and seeking additional relief when we think that the agency could do the job if it really wanted to.

In fact, I testified to that effect, that there were good staff onboard and that they did know how to do the job if they so chose, last fall.

We would appreciate anything that the committees can do to help the Department really come through with enforcement. Right now what we see is all this sort of wholesale conciliation.

I think the example that Antonia described in California is one in which MALDEF and several of the other advocacy organizations were really pushing the Department of Education to do this.

The result, I think, is a good result, but it only happened because the civil rights community pressured the Department and was there watching all that they were doing in the course of their enforcement activities.

Mr. BLAKEY. Thank you, Ms. Kohn. Ms. Hernandez.

Ms. HERNANDEZ. I think what we have at the present time is that the advocacy groups not only have to monitor the States, but we have to monitor the Federal Government. The difficulty and the frustration is that the congressional statutes are there.

In most instances, the court rulings are there. What we find ourselves up against is a Federal agency that totally refuses to undertake the congressional mandate given to it. As Margaret pointed out, we also believe that there are staffs within the Department, whether it be attorneys in the Department of Justice or Education, who are capable, who are experts, but they are being prevented from doing their jobs.

I really, at this point in time, am at a loss to recommend specific action.

Mr. BLAKEY. Thank you. Judge Robrahn, did you want to comment?

Judge ROBRAHN. Yes. The *Adams* case, the order does include section 504. I just think that if there was strong indication, aggressive indication on the part of the Office of Civil Rights that the civil rights laws were going to be enforced in our colleges and universities, then let it be known.

If not, then funds would be withheld. Maybe what we need is a withholding of funds from some universities. But in one case that was held moot.

It went to the Supreme Court. It involved 504. Texas University was quibbling over the cost of $1,500 when they receive $40 million in Federal financial assistance.

Mr. BLAKEY. Thank you very much. I was wondering, in your comment, Mr. Lichtman, whether or not you feel, probably not having had the opportunity to read the opinion from yesterday's case, whether or not that is, in part, going to strengthen you in your effort in terms of administrative enforcement as opposed to opposite remedy, other kinds of remedies.

Mr. LICHTMAN. I haven't read the opinion, but from the newspaper reports, it seems to be the strongest rebuke of the administration's effort to back off well-settled principles. It certainly will be, in terms of the spirit, if not directly applicable, it will be helpful to give further sustenance to those who are seeking to enforce the statute strictly.

I would like to add to your first question the thought that the problem is really a lack of credibility on the part of the Office for Civil Rights.

We have had over the years continuing statements by the agency to these State systems of higher education, speaking in that context, that there will be enforcement proceedings if such-and-such happens.

There will be a possible cutoff of funds. With one exception, over 13 years it has never happened. These statements are simply no longer believed by the States.

Until we have some credibility, we are not going to get compliance.

Mr. BLAKEY. Thank you very much. Ms. Davis?

Ms. DAVIS. Thank you. Ms. Kohn, you mentioned that the March 15 memorandum from Mr. Reynolds to Secretary Bell is not present Department of Education policy. Do you know that as a result of some correspondence between Secretary Bell and outside groups?

Ms. Kohn. No. I have spoken with various staff members in the department to ask whether the memorandum has been circulated as established policy, and those individuals have told me that it has not been.

I would certainly like—if there were such correspondence that Secretary Bell was not going to take that advice, I would certainly like to see it because I fear that the department might begin to adopt those policies, whether or not they are formally stated as the policies of the department.

Ms. Davis. When Mr. Reynolds testified before the subcommittees, at page 10 of his testimony he stated that the assurance of compliance regulation "is no longer construed as having application to an institution as a whole."

I wonder if you might comment on the accuracy of this and the effect this will have on enforcement by the Department.

Ms. Kohn. I believe that he is accurate in stating that the department has applied the assurance in a different manner. I don't think that it is appropriate for the assurance to be so limited.

I don't think that that is required by law. The Department has the ability to enforce the law both with respect to a recipient's failure to abide by the contract that it makes with the Government in the form of the assurance, but also under the statute separate and apart from that assurance, the Department of Education has the obligation to enforce title IX and prevent recipients from using funds for discriminatory purposes whether or not there is an assurance that has been executed.

So I think that the department's authority to enforce will not be restricted by that, but it will give the recipients some impression that they have limited responsibilities when, in fact, they should be working to implement title IX and title VI and section 504 throughout their institutions when they receive Federal funds.

Ms. Davis. One more question I have for you, Ms. Kohn, is can you articulate what the Government's position was in Grove City in the third circuit? Are we to assume that that is going to be the position that we will take in the Supreme Court?

Ms. Kohn. I wish we were to assume that, but I have no reason to make that assumption. I have not been able to secure any formal or official assurance that the Government will continue to argue that the term "program or activity" should be one that is broadly construed so that an institution such as Grove City which receives Federal funds only in the form of Pell grants will be covered as a whole institution as a result of that Federal funding, rather than just having its Federal financial aid program under the obligations of title IX.

In the third circuit the Department of Education argued that Grove City College was a recipient, even though it didn't directly receive funds. It also argued that Pell grants made the university a recipient.

Certainly in oral arguments, they stated that a broad interpretation of "program or activity" was appropriate. As I said earlier, we have no assurance at this point that the Government is going to continue that position.

Indeed, in Grove City College, the Government made efforts to settle the case before the third circuit heard argument, and indeed, the briefs from the Government were delayed a full year while consideration was given to what position the Government ought to take.

So at the moment we are waiting to see what the Government will do in the Supreme Court in that case.

Mr. KIKO. I have a question first for Margaret Kohn. On page 17 of your testimony you stated that the OCR does not perform adequate monitoring of implementation efforts by recipients.

You list concerns violated, identified at Western Michigan University. You also note that our contacts at the university report that numerous provisions of the plan have not been implemented and they see no visible sign of OCR's monitoring.

What type of contacts are you talking about at the university?

Ms. KOHN. We talked to individuals who work in the athletic program there and are familiar with the corrective action plan, as well as the actual activity level and what is going on in the department. So they are front-line people who are working in athletics in the university and know whether or not, for example, there has been a redistribution of locker room facilities so that the women students have an equitable division of those resources.

Mr. KIKO. In response to that, I have got several letters here from Western Michigan University and the Office of Civil Rights where it seems to indicate that the Office of Civil Rights is monitoring Western Michigan University.

I have a letter here dated January 26 to Damian White, Assistant Affirmative Action Office, from Christine Hoyles, subject, "Response to the Office of Civil Rights, Department of Education," and I have several pieces of correspondence from Frances O'Shea, Director, Postsecondary Education Division of the Office of Civil Rights.

Have you seen any of this correspondence?

Ms. KOHN. I have not. One of the things that we have attempted to do with the Department is meet with them and find out what is going on at Western Michigan.

I met with Joan Standlee and Ken Mines from the Chicago office, I believe it was in early March, possibly in February, and asked is anything happening, are there documents, what has been going on.

I have never been given these letters. They have not been described to me.

We submitted an analysis of the letter of finding in January to the Department. We have had no response.

My understanding is that there is some dispute in the agency as to whether or not the response is to come from the Chicago office or the Washington office. It gets shunted back and forth.

I would be delighted to see the correspondence. If, in fact, there is monitoring going on, I would be very pleased.

Mr. KIKO. I think Mr. Sensenbrenner would like to have this correspondence inserted in the record if that would be OK. I can give you a copy of that.

Ms. KOHN. Thank you very much. I would appreciate that.

Mr. HARRISON. That will be done.

[The letters follow:]

January 10, 1983

Dr. John T. Bernhard, President
Western Michigan University
Kalamazoo, Michigan 49008

Re: 05720424

Dear Dr. Bernhard:

On August 20, 1982, the Office for Civil Rights (OCR), United States Department of Education, completed its Title IX Athletics Review at Western Michigan University, including an evaluation of the plans which the University is currently implementing. You were advised at that time that OCR has the responsibility of monitoring the University until the plan has been fully following [illegible] academic year:

1. An increase in women's sports operating budgets for Fall '82 to permit more equitable travel arrangements, sports information services and recruitment activities. Please send documentation concerning the increases made in budgets and the manner in which this was reflected in opportunities, services or benefits to female athletes as outlined in your plan.
2. Hiring of a full time head women's tennis coach and a full time assistant coach each for women's basketball and track and field for the 1982-83 year. Please verify by documentation that the length of contract for these hirings is 12 months.
3. Completion of a reassignment plan for locker rooms in Gary Center and Read Fieldhouse for female athletes for the 1982-83 year. Please provide a copy of this reassignment plan.
4. A schedule for publication of all sports brochures and publicity materials as well as a study of the quality, quantity and alternative funding methods for such publications. Please provide copies of the schedule developed and the study made.
5. Publication of a new Athletic Board Handbook. Please provide a copy.

[illegible] please do not hesitate to contact me at (312) 353-3865.

Sincerely,

Mary Frances O'Shea

Dr. Mary Frances O'Shea
Director
Postsecondary Education Division

January 26, 1983

To: [illegible] White, Assistant Affirmative Action Officer

From: Christine V. Boylan, Associate Athletic Director CVB

Subject: Response to the Office of Civil Rights, United States Department of Education

The following information describes and illustrates the progress of Western Michigan University in the five areas addressed in the January 10, 1983 letter from Dr. Mary Frances O'Shea.

ITEM I

The 1982-83 women's sports operating budgets were increased by $19,000.00 in the first of three yearly allocations designed to provide equity in the areas of travel, transportation and recruiting. Exhibit A is a sport by sport analysis of the budget increases.

These budget increases have permitted all women's teams to reduce the number of student-athletes per room on over night trips to three or two, to increase the per diem to $12.00 on each trip, to utilize improved types of transportation such as vans and busses, and to finance more extensive recruiting efforts including paid campus visits.

At the conclusion of the 1982-83 fiscal year, the impact of these budget increases will be analyzed. These findings will aid in the allocation of the money available for increases in travel, transportation and recruiting for 1983-84. The same procedure will be followed in preparation for the 1984-85 fiscal year.

ITEM 2

The hiring of a full-time women's tennis coach and a full-time assistant women's track/cross country coach were completed prior to the 1982-83 academic year. Exhibits B & C are copies of the employment contracts for the staff members in question. The starting date differs due to different hiring dates but with the expiration of these contracts, new ones will be written for July 1, 1983 - June 30, 1984.

Unexpected circumstances dictated a change in the timetable for the hiring of a full-time assistant women's basketball coach. During the first week of August 1982, the head women's basketball and softball coach resigned her coaching responsibilities in the sport of basketball. Due to the faculty status of that coach, no budget money existed for the hiring of a new coach. At that point, all available personnel money had been committed so the money allocated to the hiring of a full-time assistant women's basketball coach was reallocated to hire a new head women's basketball coach and to replace the former part-time assistant women's basketball coach who also resigned.

Following the 1982-83 women's basketball season, a full-time head women's basketball coach and a full-time assistant women's basketball coach will be hired on twelve month contracts.

ITEM 3

Since the beginning of the 1982-83 academic year, some locker room reassignment has been accomplished in Gary Center and much more is in the planning stages. The women's basketball team has been reassigned to the former wrestling team room on the second floor of Gary Center. This team room is self-contained and is used exclusively by the women's basketball team.

Plans are being developed by the University Physical Plant to modify the first floor Gary Center Faculty Locker Room to include three individual team rooms. This facility would then accommodate all women's varsity athletes except the basketball team as well as visiting teams.

Cost estimates are currently being applied to this plan. These estimates will aid the identification of a completion date. This modification is part of a much larger renovation and relocation plan designed not only to improve locker room facilities for female athletes but to relocate the offices of many coaches of women's sports in Gary Center.

ITEM 6

EXHIBIT D a schedule for the publication of 1983-84 sports brochures. Budget allocations came too late to permit the total implementation of this plan for 1983-84. Some improvements in the quality of the 1982-83 brochures were made however.

EXHIBIT E includes copies of the 1981-82 and the 1982-83 brochures in women's basketball, men's & women's gymnastics and men's & women's swimming. Also included are the 1981-82 women's volleyball and softball. The 1982-83 softball brochure is due in one month and will be sent for inspection upon receipt. It will be similar in format to the 1982-83 women's basketball brochure. The 1983-84 volleyball brochure will be of a similar style.

Beginning in 1983-84, W.M.U. will publish 3 single sport color brochures for men's sports (football, basketball and hockey) and 3 single sport color brochures for women's sports (volleyball, basketball and softball). Consideration will be given to the further improvement of the coed gymnastics guide. The possibilities of going to the color format will be evaluated.

The 1982-83 sports publicity budget received a $3,000.00 increase to fund these improvements in sports publications. This represents the first of a three year commitment to budgetary increases in that area. Additional new money as allocated, will go to further upgrade all sports publications.

Additionally, in 1982-83 a women's basketball poster was produced. A sample is included as Exhibit F.

[illegible]

and 1982-83 programs as Exhibit C.

ITEM 5

The Athletic Board Handbook is currently being re-written with publication scheduled for August 15, 1983. Exhibit H includes copies of two re-written portions of the Handbook. The Student-Athlete Grievance Policy is currently under study by the Athletic Board. The revised standards for Varsity Awards as developed by a departmental study committee and approved by the Director of Athletics is about to be presented to the Athletic Board.

Exhibit I is a copy of the draft of the W.M.U. Student-Athlete Handbook which when finalized, will serve as the vehicle to appraise all Student-Athletes of policies in a variety of areas of concern to them. This is also currently being reviewed by the Athletic Board.

If you have questions regarding this information, please don't hesitate to contact me.

cc: Mr. Tom Wonderling
Mr. Chauncey Brian
Dr. John Bernhard

April 26, 1983

Dr. John T. Bernhard, President
Western Michigan University
Kalamazoo, Michigan 49008

RE: 05720424

Dear Dr. Bernhard:

On April 18, 1983, the Office for Civil Rights (OCR), United States Department of Education, received a telephone call from Mr. [illegible] White of your staff. Mr. White was responding to OCR's letter of April 7, 1983 in regard to the monitoring activities in the above-referenced case. He suggested that he and Mr. Chauncey [illegible] would like to meet with members of OCR staff in Chicago. The purpose of the meeting would be to discuss alternatives to the portions of the University's plan for its intercollegiate athletics program which have not been implemented according to the agreed upon schedule.

Before OCR staff can schedule a meeting, it is necessary that Western Michigan University clarify its position. We need a statement from the University which sets out all specific items in the plan, to which OCR agreed, which have been missed, justification in detail for the missed items, and written alternative proposals which specify the means by which the University now proposes to achieve the original goals. OCR requires assurances that we would not be in similar circumstances concerning implementation of any alternative actions when the timeframes for these were due.

Such a document from you is necessary in order that we may consider your statements and have the appropriate persons in attendance if the meeting you propose takes place.

We request your written response within five working days of your receipt of this letter. If you have any questions please do not hesitate to contact me or Helene Benic, Acting Branch Chief, Postsecondary Education Division, at (312) 353-2500.

Sincerely,

Dr. Mary Frances O'Shea
Director
Postsecondary Education Division

FROM: W. Bewis
Acting Branch Chief

SUBJECT: Telephone contacts with Mr. Chauncey Brion, Western Michigan University.

return the call.

On May 13, 1983, I called again and this time I reached him. He stated that while there were alternatives the University could promise, they were having difficulty with the assurances OCR requires since they have a problem with money to implement such alternatives. I reminded Mr. Brion that whatever amount of money is available to the program must be equitably distributed under the regulation. Mr. Brion responded that OCR should know that "that isn't the reality." However, he promised a written response "by the end of the week."

April 7, 1983

Dr. John T. Bernhard, President
Western Michigan University
Kalamazoo, Michigan 49008

RE: 05720426

Dear Dr. Bernhard:

On January 10 1983, the Office for Civil Rights (OCR), United States Department of Education wrote to Western Michigan University to request information regarding the implementation of the agreed upon plan for the 1982-83 academic year which was a result of our Athletics Review of Apri 1982. Having reviewed your response of January 26, 1983, OCR wishes to commend you for the progress you have made to date. However, we must ag stress our responsibility to ensure that all areas of the plan are compl on schedule. We note that the information provided indicates that the following commitments have not been implemented:

- Twelve month contracts for the full time women's tennis coach and full time assistant track and field, cross country coach have not provided.
- The hiring of a full time, twelve month-contracted, assistant wom basketball coach did not take place.
- A copy of the locker room reassignment plan was not submitted as promised.
- The Athletic Board Handbook will not be published during the 1982- academic year as scheduled.

The Office for Civil Rights is seriously concerned with the University's failure to comply, on schedule, with those portions of the plan which w accepted by OCR in our letter of August 20, 1982 with respect to the ab referenced review.

1. In regard to the twelve month contracts for the tennis and track coa we do not understand why these two contracts were not written for tw months. The hiring was done subsequent to the June 9, 1982 date of University's document which identified the actions it planned to tak Why was the hiring of these two coaches not done in July 1982, with attending twelve month contracts, rather than the twelve month contr being delayed until July 1983? Further justification is needed.

2. Regarding the hiring of a full time twelve month-contracted assistan basketball coach for women, we find your rationale for omitting the of a full time assistant to be a serious breach of your plan. Even

[illegible] two assistant coaches for that sport. Your failure to provide the funds to carry out your commitment for the 1982-83 year has deprived this women's sport, for still another year, of the coaching personnel necessary to provide equity.

The hiring of full-time coaches was expected to have a positive effect on other areas of Western Michigan University's athletics program for women which were found to be inequitable, i.e., recruitment and student interest and abilities. Failure to follow through on your commitments to coaching for women athletes will result in this complaint being re-opened and a finding of a violation of Title IX may be made.

3. Regarding the locker room reassignment plan, it was our understanding that this plan was to be completed before the 1982-83 year, and that OCR would be provided a copy of it. Your initial response makes clear that a comprehensive reassignment plan, the purpose of which would be to provide equitable locker room space for all female athletes, has not yet even been developed. Placement of the women's basketball team in the former wrestling team locker room, while helpful, is not the total approach to reassignment which OCR expected. We recognize the difficulties faced by the University in its allocation of space in its present athletics facilities and we are looking forward to seeing the detailed renovation and/or reconstruction plan which you are preparing for the Fall of 1983. However, this interim reassignment plan was an integral part of your commitment. We will expect to receive a complete copy and evidence of further implementation in your response to this letter.

intercollegiate program. While the draft portions submitted are commendable, OCR must have a copy of the above mentioned policy and criteria in your response to this letter.

5. Finally, OCR requires more specific information regarding the 1982-83 sports budgets.

   a. For each increase in budget for a women's sport which you identified for us, i.e., travel, recruiting and transportation, what were the increases in the men's sports?

   b. Specifically how were the additional recruitment funds for women's sports used? Specifically how did this result in the more effective recruitment campaign envisioned by the University? How were sports operating budgets increased to fund adequate long distance telephone expenses as outlined in your plan?

   Please provide the documents generated by the Office of the Assistant Director for Athletics for Finance in his activities as monitor of expenses incurred in the area of recruitment during the 1982-83 academic year.

c. Which sports were allotted "holdover" funds in their operating budgets for 1982-83? How were they used? Which sports were provided off-campus pre-game housing and dining during season play?

We would appreciate your prompt response. A call within five days of your receipt of this letter from the person you designate to respond to this request concerning the time such information can be expected should be made to me or Helene [illegible], Acting Branch Chief, Postsecondary Education Division. If you have any questions or if we may be of any further assistance, please do not hesitate to contact me or Mrs. [illegible] at (312) 353-[illegible].

Sincerely,

Dr. Mary Frances O'Shea
Director
Postsecondary Education Division

cc: Chauncey J. Brian
Secretary
Board of Trustees

Insert 3H—4 Pages

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS—REGION V
300 SOUTH WACKER DRIVE - 8TH. FLOOR
CHICAGO, ILLINOIS 60606

OFFICE OF THE
DIRECTOR

August 20, 1982

Dr. John T. Bernhard
President
Western Michigan University
Kalamazoo, Michigan 49008

Re: OCR #05720424

Dear Dr. Bernhard:

By a letter dated November 19, 1981, the Office for Civil Rights (OCR) of the Department of Education (formerly of the Department of Health, Education and Welfare) informed you that Western Michigan University had been selected for a Title IX compliance review addressing its intercollegiate athletics program. The letter explained that the review would include an investigation of the complaint (#05720424) filed with the Office in 1972 and supplemented in 1974 alleging that Western Michigan University discriminates on the basis of sex in its intercollegiate athletic program. The complaint alleged that the University discriminates against female athletes in the total athletic program. This complaint had been previously investigated by OCR; however, final determination was delayed pending development of OCR's policy interpretation.

On April 26 and 27, 1982 and again on May 7, 1982 representatives of the Office for Civil Rights met with members of your staff to discuss informally the proposed findings of our investigation and to identify any plans the University may already be implementing which would correct the inequities that were found.

OCR has now completed its review, including an evaluation of the plans the University is implementing, and has found that Western Michigan University is in compliance with Title IX in the award of athletic financial assistance and in the operation of the other program areas in its intercollegiate athletics program. This letter and the enclosed Statement of Findings explain the bases for our findings.

We appreciate the cooperation that you and your staff extended to our investigators during the on-site investigation and throughout the course of the review. We are particularly grateful to Mr. Damon White, Assistant Affirmative Action Officer, and Mr. Chauncey Brinn, Assistant Vice President for Government Relations, who coordinated our on-site visit and who have responded promptly to our many requests for clarification and additional information.

As a recipient of Federal financial assistance administered by the Department of Education, Western Michigan University is required to comply with the provisions of Section 901 (a) of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., (hereinafter cited as Title IX), which prohibits discrimination against persons because of their sex by educational institutions which receive Federal financial assistance. Additionally, Western Michigan University is subject to the provisions of HEW's implementing regulations for Title IX, 34 CFR Part 106, which became effective on July 21, 1975 and were republished by the Education Department on May 9, 1980.

The Title IX regulation (copy enclosed) sets forth specific requirements regarding intercollegiate athletics. Athletic scholarships are addressed at 34 CFR 106.37 (c). The general prohibition of discrimination on the basis of sex in intercollegiate athletic programs is addressed at 34 CFR 106.41.

Because the Title IX regulation establishes separate legal standards for the provision of equal athletic opportunity in program areas other than financial assistance, OCR has assessed compliance with the two sections of the regulation individually. As a means of assessing compliance, we have followed the directions provided in the Policy Interpretation issued by the Department of Health, Education, and Welfare on December 11, 1979, 44 Fed. Reg. 71413 et seq. (1979). A copy is enclosed for your information.

In assessing compliance with §106.37, OCR considered 1) whether the total amount of athletic scholarship aid available to male and female athletes was substantially proportionate to their rates of participation in intercollegiate athletics; and 2) whether different types of grant and non-grant non-athletic assistance were proportionately available to male and female athletes.

We assessed compliance with 34 CFR 106.41 (c) by reviewing the overall intercollegiate athletic program. We reviewed the ten factors listed in the regulation plus the recruitment of student athletes and the provision of support services. (As explained in the Policy Interpretation, the regulation authorizes OCR to consider factors other than those listed in the regulation.)

In each program area we examined whether the availability, quality and kinds of benefits, opportunities and treatment provided were equivalent for both sexes. Equivalent is defined as equal or equal in effect. It is important to note that we compared the men's program and the women's program on an overall basis, rather than on a sport-by-sport basis that would pair, for example, men's basketball and women's basketball. Where disparities were noted, we considered whether the differences were negligible. Where the disparities were not negligible, we determined whether they were the result of nondiscriminatory factors. Finally, we determined whether disparities resulted in the denial of equal opportunity to male or female athletes because the disparities collectively were of a substantial and unjustified nature or because the disparities in individual program areas were substantial enough in and of themselves to deny equality of athletic opportunity. We recognize that our analysis of each program area is detailed. However, this level of analysis is necessary to arrive at the overall determinations as described above.

The regulation at 34 CFR 106.41 (c) provides that "unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex." Where appropriate, we have considered the level of funding for men's and women's programs in assessing the equivalence of benefits and opportunities.

SUMMARY OF FINDINGS:

Athletic Financial Assistance:

In 1979-80 the University awarded 79.2% of all athletic financial aid to male athletes and 20.8% to women, while men comprised 71.6% of all athletes and women 28.4%. This award of aid was not substantially proportionate and this disparity was significant. Additionally, there was still a substantial disparity when the higher out-of-state tuition was considered. However, in 1980-81 the University awarded 77.4% of the total athletic aid to the 73.3% of male participants and 22.6% of the total aid to the 26.7% of participants who were female. This time, when the out-of-state tuition was taken into consideration, substantial proportionality resulted. Thus, the amount of athletic aid awarded to male and female participants was substantially proportionate to their rates of participation in intercollegiate athletics. OCR also found that the amounts of non-athletic grants and non-grant monies awarded were proportional. Therefore, based on our analysis, OCR concludes that the University did provide reasonable opportunities to male and female athletes in the award of financial assistance in the year 1980-81 and finds the University in compliance with 34 CFR 106.37 (c) of the Title IX regulation.

Other Program Areas:

OCR finds that Western Michigan University is providing equivalent benefits, treatment, service and opportunities to all athletes in the areas of: 1) provision of equipment and supplies; 2) scheduling of games and practices; 3) opportunity to receive tutoring and compensation of tutors; 4) medical and training facilities and services; and 5) provision of support services.

In 1980-81 equivalent benefits, treatment, service and opportunities were not being provided in the areas of: 1) travel and per diem; 2) coaching; 3) provision of locker rooms, practice and competitive facilities; 4) housing and dining facilities and services; 5) publicity; 6) recruitment of student athletes, and 7) accommodation of student interests and abilities. OCR concluded that these disparities collectively were substantial and deny equality of opportunity. However, Western Michigan University, at present, is implementing plans which will remedy the disparities within a reasonable period of time. Therefore, we find the University to be in compliance with 34 CFR 106.41 (c).

Enclosed is a Statement of Findings which provides a more complete description of the general background, scope and method of investigation of the review. It states the factual findings of the investigation and describes the bases for the conclusions. The report is divided into three principal parts: Athletic Financial Assistance, Other Program Areas, and Effective Accommodation of Student Interests and Abilities.

This letter of findings addresses only the issues listed above and should not be interpreted as a determination of Western Michigan University's compliance or noncompliance with Title IX in any other respect. It should be emphasized that the findings and conclusions in this letter and the attached Statement of Findings are based on the currently applicable provisions of the Title IX implementing regulations and the Policy Interpretation described above.

The Freedom of Information Act requires that the Office for Civil Rights release this letter and other information about this case upon request by the public. In the event that OCR receives such a request, we will protect information that identifies individuals or that may constitute an invasion of privacy and will inform the University if we are compelled to release information.

Thank you again for your cooperation. We congratulate Western Michigan University for excellence in achievement of compliance with Title IX in the award of athletic financial assistance. We are pleased that the University is implementing plans for the intercollegiate athletic program which will ensure continuing compliance in the other areas. If you have further questions, please do not hesitate to call me or Dr. Mary Frances O'Shea, Director, Postsecondary Education Division, at 312/353-3865.

Sincerely,

Kenneth A. Mines

Kenneth A. Mines
Regional Director

Enclosures

Mr. KIKO. I have a question for Mr. Robrahn. In your testimony you noted that technical assistance funding under section 504 has been discontinued. What type of technical assistance are you talking about? Are you talking about all technical assistance?

Judge ROBRAHN. I am talking about formal programs of training of recipients of Federal financial assistance in what their responsibilities were under the law, and also the kind of technical assistance that would come from the Office for Civil Rights itself as a result of letters or phone calls and so on.

Mr. KIKO. I have some figures here that Mr. Singleton made a statement before the Senate Appropriations Committee stating that for fiscal year 1984, they were going to be allocating $618,000 in technical assistance and for fiscal year 1983, total section 504 technical assistance was $515,000.

He states that they are going to be doing more in-house technical assistance because the technical assistance that has been offered by outside contractors has been spotty. Do you have any comment to that?

Judge ROBRAHN. Originally, the amount of money that was provided by the Congress for technical assistance in training programs was around $8 or $9 million. So the amount that they are now talking about is a small fraction of what was originally felt necessary.

Mr. KIKO. I have no further questions.

Mr. HARRISON. Thank you very much.

If there are no further questions, I think it remains for me to thank you all for coming and sharing your information with us. It has been a pleasure to have you here.

This hearing is adjourned.

[Whereupon, at 11:25 a.m., the subcommittees adjourned subject to the call of the Chair.]

○